



Ottawa, Friday, December 8, 2000

Inquiry No.: NQ-2000-004

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

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

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated August 10, 2000, and of a final determination dated November 8, 2000, respecting the dumping in Canada of waterproof footwear and bottoms of plastic or rubber, including moulded clogs, originating in or exported from the People's Republic of China, excluding ski boots, skating boots and all footwear subject to the order made by the Canadian International Trade Tribunal in Review No. RR-97-001.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the People's Republic of China has not caused, but is threatening to cause, material injury to the domestic industry, excluding:

- fully waterproof polyvinyl chloride injection-moulded footwear consisting of a one-piece construction where the entire surface, other than the sole portion, is coated with an adhesive and flocked with small particles of suede, suede dust or suede powder, whether or not trimmed with other materials and however fastened; and
- women's waterproof footwear consisting of a polyvinyl chloride or polyurethane injection-moulded sole of non-boat-like construction and a polyurethane or nylon upper that is treated and affixed to the sole in a manner that makes the boot fully waterproof, whether or not trimmed with other materials and however fastened.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Zdenek Kvarda
Zdenek Kvarda
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 7 to 9, 2000
Date of Finding: December 8, 2000

Tribunal Members: Pierre Gosselin, Presiding Member
Richard Lafontaine, Member
Zdenek Kvarda, Member

Director of Research: Selik Shainfarber

Research Manager: Richard Cossette

Research Officer: Po-Yee Lee

Director of Economics: Dennis Featherstone

Economist: Nahed Minawi

Statistical Officers: Joël J. Joyal
Marie-Josée Monette
Julie Charlebois

Counsel for the Tribunal: Michèle Hurteau
Eric Wildhaber

Registrar Officer: Pierrette Hébert

Participants: G.P. (Patt) MacPherson
Naila Elfar
for The Shoe Manufacturers Association of Canada
(Representing Domestic Producers)

Darrel H. Pearson
Peter W. Collins
for Retail Council of Canada

Gregory Kanargelidis
Glenn F. Leslie
Robert Kreklewich
for M & M Footwear Inc.

Melissa McCormack
Canadian Association of Importers and Exporters Inc.

Tommy Ng
Tai Lung Canada Ltd.

André Morissette
Hichaud Inc.

Ron Sedlbauer
Cougar Shoes Inc.

(Exporters/Importers)



Ottawa, Friday, December 22, 2000

Inquiry No.: NQ-2000-004

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

Special Import Measures Act — Whether the dumping of the above-mentioned goods has caused material injury or retardation or is threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of waterproof footwear and bottoms of plastic or rubber, including moulded clogs, originating in or exported from the People's Republic of China, excluding ski boots, skating boots and all footwear subject to the order made by the Canadian International Trade Tribunal in Review No. RR-97-001 has not caused, but is threatening to cause, material injury to the domestic industry, excluding:

- fully waterproof polyvinyl chloride injection-moulded footwear consisting of a one-piece construction where the entire surface, other than the sole portion, is coated with an adhesive and flocked with small particles of suede, suede dust or suede powder, whether or not trimmed with other materials and however fastened; and
- women's waterproof footwear consisting of a polyvinyl chloride or polyurethane injection-moulded sole of non-boat-like construction and a polyurethane or nylon upper that is treated and affixed to the sole in a manner that makes the boot fully waterproof, whether or not trimmed with other materials and however fastened.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	November 7 to 9, 2000
Date of Finding:	December 8, 2000
Date of Reasons:	December 22, 2000
Tribunal Members:	Pierre Gosselin, Presiding Member Richard Lafontaine, Member Zdenek Kvarda, Member
Director of Research:	Selik Shainfarber
Research Manager:	Richard Cossette
Research Officer:	Po-Yee Lee
Director of Economics:	Dennis Featherstone
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Counsel for the Tribunal:

Michèle Hurteau
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Hichaud Inc.

Ron Sedlbauer
Cougar Shoes Inc.

(Exporters/Importers)

Witnesses:

George P. Hanna
President
The Shoe Manufacturers' Association
of Canada

Dolly Dhaniram
National Business Manager
Footwear & Luggage
Sears Canada Inc.

Paul Hubner
President
Baffin Inc.

Tim Boyce
Seasonal Footwear Buyer
Wal-Mart Canada Inc.

Thor Blyschak
President
Rallye Footwear Inc.

Kevin Meloche
Senior Buyer, Footwear
Zellers Inc.

Lise Desjardins
Vice-President
Commercial Footwear Division
Acton International Inc.

Claude Potvin
Vice-President
M & M Footwear Inc.

François Soucy
President and Chief Operating Officer
Acton International Inc.

André Morissette
General Manager
Hichaud Inc.

Gordon Cook
President
Genfoot Inc.

Ron Sedlbauer
Vice-President
Cougar Shoes Inc.

Address all communications to:

Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7



Ottawa, Friday, December 22, 2000

Inquiry No.: NQ-2000-004

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

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

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RICHARD LAFONTAINE, Member
ZDENEK KVARDA, 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 following the issuance by the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) of a preliminary determination dated August 10, 2000,² and of a final determination dated November 8, 2000,³ respecting the dumping in Canada of waterproof footwear and bottoms of plastic or rubber, including moulded clogs, originating in or exported from the People's Republic of China (China), excluding ski boots, skating boots and all footwear subject to the order made by the Tribunal in Review No. RR-97-001.⁴

On August 11, 2000, the Tribunal issued a notice of commencement of inquiry.⁵ In that notice, the Secretary of the Tribunal invited persons to notify the Tribunal whether they intended to make representations on the question of public interest, if the Tribunal made a finding of injury or threat of injury. No requests to make representations on the public interest question were received.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers, importers and purchasers and foreign manufacturers of waterproof footwear and bottoms. Respondents provided production, financial, import, export, sales, pricing and market information, as well as other information relating to waterproof footwear and bottoms, for the period from January 1, 1997, to June 30, 2000 (the period of the Tribunal's inquiry). From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. Parties submitted and replied to requests for information with respect to matters relevant to the inquiry, in accordance with directions from the Tribunal.

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1. R.S.C. 1985, c. S-15 [hereinafter SIMA]. On April 15, 2000, certain amendments came into effect that amended section 42. The new provisions apply to inquiries commenced after April 15, 2000. They are, therefore, not applicable in this inquiry, as the notice of inquiry was received by the Canada Customs and Revenue Agency on April 14, 2000.
 2. C. Gaz. 2000.I.2692.
 3. C. Gaz. 2000.I.3523.
 4. *Order and Statement of Reasons* (20 October 1997) (CITT).
 5. C. Gaz. 2000.I.2642.

The record of the proceedings consists of all Tribunal exhibits, including the public and protected replies to the questionnaires and the requests for information, all public and protected exhibits filed by the parties throughout the inquiry and 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 undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

Public and in camera hearings were held in Ottawa, Ontario, from November 7 to November 9, 2000. The Shoe Manufacturers' Association of Canada (SMAC) and four of its member producers of waterproof 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. M & M Footwear Inc. (M&M), an importer of waterproof footwear, testified and was also represented by counsel at the hearing. Two parties not represented by counsel, Hichaud Inc. (Hichaud), a small domestic manufacturer, and Cougar Shoes Inc. (Cougar), an importer, also gave evidence at the hearing.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's investigation into this matter covered imports of waterproof footwear and bottoms originating in or exported from China during the period from April 1, 1999, to March 31, 2000 (the period of the Commissioner's investigation).

In the absence of sufficient information to determine normal values under section 20 of SIMA, normal values were determined pursuant to a ministerial specification under section 29 on the basis of the export price advanced by 49 percent. Export prices were based on the importers' declared purchase prices pursuant to section 24. The investigation revealed that all the subject goods from China were dumped by 33 percent of the normal value.

Before making a determination of dumping, the Commissioner must be satisfied that the actual or potential volume of dumped goods is not negligible. If the volume of dumped goods of a country is less than 3 percent of the total volume of the goods under inquiry that are released into Canada from all countries, the volume is considered to be negligible. According to the Canada Customs and Revenue Agency (CCRA), the volume of dumped imports from China represented 96 percent of all imports of the goods under inquiry and, thus, is not negligible.

PRODUCT

Product Definition and Description

For the purposes of this inquiry, the distinctive feature of waterproof footwear is that both the sole portion and a portion of the upper, sufficient to give waterproof protection to the foot, are incorporated in a single component which may be made of rubber or plastic. Styles include footwear manufactured for men, women, youth, misses and children.

The goods subject to this inquiry include waterproof plastic footwear made from plastic resins by injection moulding or other processes. The term "plastic" includes polyvinyl chloride (PVC) and other plastics. PVC is the plastic most commonly used in this class of footwear. In other styles, such as duck shoes

or winter boots, a boat-like (or shell-like) waterproof bottom may have trimmings, attachments, liners, cuffs or tops (also referred to as “uppers”) of nylon or other materials.

The goods subject to this inquiry also include certain styles of waterproof rubber footwear. The term “rubber” refers to natural and synthetic rubber, including thermoplastic rubber (TPR). Rubber-bottomed footwear with leather tops, waterproof rubber riding boots and waterproof rubber safety footwear are also subject to this inquiry.

Moulded clogs are also included in the definition of the subject goods. Such goods are typically made from plastic or rubber and may be open or closed at the heel, depending on the design of the sole.

Waterproof bottoms of plastic or rubber (bottoms) are also included in the definition of the subject goods. A bottom is the lower boat-like component which is combined with an upper made of nylon, leather or other material and a liner to comprise the finished waterproof footwear.

Production Process

Waterproof footwear may be produced using the injection moulding process alone or in combination with the stitched product process. An example of a product made solely by injection moulding is a PVC rainboot. The combination of injection moulding and stitching would produce, for example, a rubber-bottom, nylon-top winter boot.

In the injection moulding process, a granulated chemical compound of either PVC or TPR is heated and injected into steel moulds installed in moulding machines. Each mould dictates the size, style and number of colours of a moulded item. When the chemical is forwarded to the moulding machine, it is vacuumed into the hopper and pushed into a heated barrel. A screw inside the barrel generates additional heat to melt the compound and then injects it into a mould. The resulting product consists of an unfinished waterproof bottom or single-piece (e.g. a rain boot) waterproof footwear. The moulded items are then cooled, extracted and trimmed. Components and markings are added before the finished footwear is packed for shipping.

More complex waterproof footwear, such as winter boots, consists of waterproof bottoms that are attached to various types of uppers. The stitched product process consists of cutting and sewing uppers of various materials, nylon boot collars, liners and various other components. After attaching the upper to the base, additional finishing and packing are completed before transfer to shipping.

The arrangement of the assembly departments varies from company to company - from typical assembly-line fashion, where each worker performs a specific task to work modules consisting of a small team of employees working together on a particular product from start to finish.

DOMESTIC INDUSTRY

There are currently five major producers of waterproof footwear and bottoms in Canada. All five major producers are members of SMAC. They are: Acton International Inc. (Acton) of Montréal, Quebec; Baffin Inc. of Stoney Creek, Ontario; Genfoot Inc. of Montréal; Régence Footwear Inc. of Charlesbourg, Quebec; and Rallye Footwear Inc. of Ville d’Anjou, Quebec.

In addition to the above producers, there are five secondary producers of waterproof footwear: Alliance Mercantile Inc. of Burnaby, British Columbia; Hichaud Inc. of Québec, Quebec; Les Entreprises

J. E. Goulet Enrg. of Luceville, Quebec; Chaussures Vercorp Inc. of St. Bernard, Quebec; and Viberg Boot Manufacturing Ltd. of Victoria, British Columbia. These secondary producers do not manufacture their own footwear bottoms, but purchase them from major domestic producers or from importers and attach domestic or imported uppers of various materials to produce finished waterproof footwear. The total production of these secondary producers represents only about 1 percent of the total domestic production.

Four producers have gone out of business since 1997. They are Maple Leaf Shoe Company Limited, Carlaw Limited, Norimco, a division of Bata Industries Limited and Kaufman Footwear, Division of William H. Kaufman Inc. (Kaufman), Kitchener, Ontario, previously a major producer and a SMAC member, that declared bankruptcy on July 21, 2000.

EXPORTERS AND IMPORTERS

The CCRA identified 16 importers of the subject goods from China during the period of investigation. The Tribunal surveyed these 16 importers, as well as 20 other importers that Tribunal staff considered to be possible importers of the goods under inquiry. These importers of waterproof footwear and bottoms accounted for virtually all of the waterproof footwear imports from subject and non-subject sources during the Tribunal's three-and-a-half-year period of inquiry.

There was a concentration of imports, with the top three importers accounting for close to 80 percent of total imports from all countries in 1999. One of the largest importers was M&M, which specializes in women's footwear of all types, including women's waterproof nylon footwear, women's flocked footwear, men's and women's duck shoes and women's garden clogs. M&M's customers include major retail chains, such as Sears Canada Inc. (Sears), Zellers Inc. (Zellers) and Wal-Mart Canada Inc. (Wal-Mart), as well as independent retail stores. These three retailers also import the subject goods directly from China in significant quantities.

The CCRA identified 13 Chinese manufacturer-exporters of waterproof footwear and bottoms during the period of investigation. A foreign producers' questionnaire was sent to these manufacturers.⁶ No responses to this questionnaire were received by the Tribunal.

MARKETING AND DISTRIBUTION

Domestically produced waterproof footwear is sold wholesale by manufacturers directly to specialty stores, mass merchandisers and other retailers. Some domestic producers also import and sell small quantities of waterproof footwear through these same channels of distribution. Domestic producers attend national and international footwear shows to get exposure, to promote and sell their product, and to see the new fashion trends in the industry.

Some domestic producers issue price lists. These lists are generally used, however, only as guidelines, since rebates, discounts and competitive conditions play a major role in determining actual wholesale prices. Other domestic producers negotiate prices without any reference to published price lists.

Importers-wholesalers import the goods for re-sale to large retailers or specialty stores. Price lists are normally not used by the importers-wholesalers, with prices being individually negotiated with the

6. These questionnaires were forwarded to the Embassy of the People's Republic of China in Ottawa, Ontario.

purchasers. As noted above, a number of large retailers, notably Sears, Wal-Mart and Zellers, also import directly for re-sale in their retail outlets.

POSITION OF PARTIES

Domestic Industry

SMAC alleged that its members have suffered and are under the threat of material injury from the dumping of the subject goods from China. It submitted that evidence before the Tribunal showed injury arising from declining domestic production, lost sales, reduced market share, declining profits and gross margins, and reduced employment and capacity utilization. SMAC submitted that these allegations have not been contested over the course of this inquiry.

SMAC contended that the subject goods, as evidenced by the doubling of their market share to a total of 14 percent in the past two years, are undeniably the cause of injury to domestic manufacturers of waterproof footwear and bottoms. This increase in market share came at the expense of the domestic industry and reduced non-subject imports to less than 1 percent of market share in 1999. According to SMAC, these gains in market share have been achieved because of the low, dumped prices of Chinese products.

SMAC noted that Chinese manufacturers have become adept at copying certain Canadian waterproof footwear, such as duck shoes, down to the finest detail. As a result, Chinese manufacturers could begin making detailed copies of other well-established Canadian products. This constitutes a threat of injury.

Finally, SMAC pointed to the acquisition of Kaufman's "Sorel" brand by Columbia Sportswear Company (Columbia), following the Kaufman bankruptcy. The Sorel name had always been recognized for its high quality and design. According to SMAC, it appeared likely that Columbia would manufacture Sorel waterproof footwear in China. It submitted that, if the Sorel footwear were imported from China at dumped prices, this would pose a threat of injury to domestic production.

As regards the various requests for exclusion, SMAC contended that they should all be rejected by the Tribunal. The RCC requested an exclusion for flocked suede waterproof footwear (FWF). SMAC argued that this product is an imitation of non-waterproof boots that were covered by another finding involving China and that they were being imported essentially to circumvent that other finding. While the domestic industry does not currently produce FWF, the importation and sale of these products did displace domestic sales of waterproof footwear. Moreover, SMAC contended that the domestic industry might be able to profitably produce FWF at higher price points, if the dumping of FWF from China were eliminated.

M&M requested an exclusion for a certain type of women's waterproof nylon footwear. SMAC contended that domestic producers manufactured substantially similar domestic products and that these boots resembled footwear covered by an existing finding against China which, it alleged, were being imported to circumvent that finding.

Hichaud requested an exclusion for waterproof bottoms for the manufacture of its winter boots. SMAC submitted that bottoms were produced in Canada and that the domestic industry was prepared to supply Hichaud's needs.

Cougar requested an exclusion for certain safety boots. SMAC argued that this request should be rejected because this type of boot, formerly produced by Kaufman, would now be produced in Canada by Acton, which had purchased the Kaufman equipment for this purpose.

Parties Opposing

RCC

The RCC indicated that it was not contesting the issue of whether the domestic industry had suffered injury. Rather, it was requesting a specific exclusion for FWF, a type of waterproof PVC boot that was covered with suede dust or suede powder to give it a sporting or fashion look. The RCC contended that FWF constitutes a unique fashion-forward product that has responded to the special needs of a large and distinct market segment or niche since 1995. According to the RCC, the success of FWF is attributable, in part, to its distinct retail price point and to the mild climatic conditions that have prevailed in recent years.

The RCC further submitted that there is no domestic production of FWF, nor any goods that compete with FWF. Moreover, there is no evidence of planned domestic production or that SMAC members are committed and able to meet the requirements of the Canadian market in this area in the foreseeable future. To this, the RCC added that, when given opportunities to produce FWF in the past, SMAC members failed to seize them. In the RCC's view, SMAC members appear to have been slow to recognize the growing market for FWF, viewing it, rather, as a fad.

Because of the foregoing, the RCC submitted that there is no evidence that FWF has caused injury or retardation or that it constitutes a threat of injury to the domestic industry. In its view, FWF should be considered a separate class of goods for which no injury or threat of injury has been established or, alternatively, if the Tribunal finds that there is one class of goods, FWF should be excluded from any finding.

M&M

M&M, a major importer of the subject goods, argued that material injury to the domestic industry from dumping has not been demonstrated by SMAC. Rather, M&M contended that many other factors not related to dumping, such as mild winters and competition among the domestic producers, have impacted the Canadian waterproof footwear industry in recent years.

M&M submitted that, in any event, certain goods that it was importing from China were not causing injury to domestic production. These goods were women's fully waterproof nylon boots with non-boat-like construction bottoms (women's NBC boots). In comparison, Canadian-made boots all had boat-like bottoms. Basically, the manufacturing process and look of M&M's imported women's NBC boots were quite different from domestic products. In M&M's view, its women's NBC boots fill a void that is not being filled by domestically produced women's footwear and, consequently, there is no displacement of domestic production.

In short, M&M contended that its imported women's NBC boots were not like goods to domestic goods. Moreover, according to M&M, there was nothing to indicate that the domestic industry had any plans to produce a comparable boot in the future. Accordingly, M&M requested an exclusion for these imported women's NBC boots, either as a separate class of goods or as an exclusion within the class.

Hichaud

Hichaud, a small domestic manufacturer, requested an exclusion for rubber bottoms originating in China. It imports these bottoms as a component of certain “low-end” snowmobile and sport-type boots that it manufactures by adding uppers. Hichaud argued that anti-dumping duties on imported bottoms would make its products uncompetitive, thereby threatening its very existence and the 35 jobs that it provides to handicapped workers within the framework of the Quebec Achievement Centre. Because of its low volume of production and sales, Hichaud argued that its imports of rubber bottoms had not caused material injury to the domestic industry, nor would its use of these goods threaten to cause such injury, if its request for exclusion were granted.

Cougar

Cougar, an importer, requested an exclusion for rubber safety footwear with metatarsal protection from China commonly used in the mining industry. Cougar alleged that there is a shortage of this type of boot in Canada, since Kaufman ceased production following its bankruptcy. Cougar contended that, although there were currently similar domestic boots on the market in Canada, the domestic products were not viewed by end users as being of the same quality as those manufactured in China.

Tai Lung Canada Ltd. (Tai Lung)

Tai Lung, an importer, did not attend the public hearing, but did file a submission. It argued that the subject goods are composed of different classes of goods and, in particular, that FWF is not produced in Canada and should be excluded from any finding of injury or threat of injury. Tai Lung further submitted that any injury purportedly experienced by the domestic industry cannot be attributable to dumping but, rather, to both the climatic conditions that have prevailed in recent years and the pressures brought on by increased concentration of ownership in the retail sector. Finally, Tai Lung contended that Columbia will not jeopardize the value of its recently acquired “Sorel” brand by associating it with “cheap Chinese imports”.

ANALYSIS

Pursuant to section 42 of SIMA, the Tribunal is required to “make inquiry . . . as to whether the dumping . . . of [waterproof footwear and bottoms] . . . has caused injury or retardation or is threatening to cause injury”. Injury is defined in subsection 2(1) as “material injury to a domestic industry”.

Like Goods

The Tribunal must determine which domestically produced goods are like goods to the subject goods.

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.

The Commissioner defined the goods that were the subject of his dumping investigation as waterproof footwear and bottoms of plastic or rubber, including moulded clogs, originating in or exported from China, excluding ski boots, skating boots and all footwear subject to the order made by the Tribunal in Review No. RR-97-001. The Tribunal notes that the evidence shows that domestic producers manufacture goods of the same general description, the uses and characteristics of which closely resemble the subject goods. The Tribunal, therefore, finds that the domestic goods of the above description constitute like goods to the subject goods within the meaning of paragraph 2(1)(b) of SIMA.

At the hearing, the RCC and an importer, M&M, argued that certain goods, namely, FWF and women's NBC boots constituted a separate class or subclass of goods. Although the Tribunal is not bound by the Commissioner's definition of class of goods, the Tribunal notes that the Commissioner identified only one class of goods and provided margins of dumping with respect to the one class of goods as defined. If there is more than one class of goods, the Commissioner would be required to conduct separate dumping investigations for each class of goods, and the Tribunal, similarly, would be required to conduct separate inquiries regarding injury.

In this regard, the Tribunal finds that all the waterproof footwear that is described by the Commissioner is made of substantially the same materials and components and has essentially the same functional end use, namely, protection of the foot against inclement weather. In the Tribunal's opinion, this places all the described goods in one class of goods, even though there are numerous styles and varieties, as well as, in some cases, different manufacturing processes and techniques involved in the production of these goods. In the Tribunal's view, the fact that the product definition is, in this case, very broad does not, in and of itself, mean that it should be divided into separate classes or subclasses of goods. The Tribunal, therefore, finds that the FWF and women's NBC boots are not separate classes of goods. However, this does not mean that they cannot be excluded from the scope of an injury finding, if the Tribunal finds that they occupy a distinct market niche that is not served by the domestic production of like goods.⁷

The Tribunal further notes that waterproof bottoms are part of the definition of the subject goods. Over the period of inquiry, only a very small volume of bottoms were imported from China into Canada.⁸ Bottoms are a major component of finished footwear. They are not sold to consumers and have no apparent value apart from their use in finished footwear. In this context, as a major material component, the Tribunal considers bottoms to be part of the same class of goods as finished waterproof footwear.

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.

7. See, for example, *Certain Grain Corn, Preliminary Determination of Injury* (10 October 2000), *Statement of Reasons* (25 October 2000), PI-2000-001 (CITT).

8. *Public Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-004-6, Administrative Record, Vol. 1B at 17.

Having determined that domestically produced waterproof footwear and bottoms of the same description as the subject goods constitute “like goods”, the Tribunal must next determine what constitutes the domestic industry for the purposes of assessing injury. The domestic industry consists of 10 known producers of like goods. Of those, 5 producers, all members of SMAC, supported the complaint and collectively currently account for about 99 percent of the total domestic production of like goods. Therefore, the Tribunal finds that, for the purposes of this inquiry, the producers represented by SMAC constitute the domestic industry.

Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*⁹ 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. In this case, the economic factors include actual or potential declines in domestic sales, market share, profits and financial performance. Subsection 37.1(3) of the SIMA Regulations 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. However, before examining issues of causation, the overall state of the market and the industry will be considered.

State of the Market and Industry

Table 1 provides certain key market and industry performance indicators for waterproof footwear and bottoms.

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

Table 1
Key Market and Industry Performance Indicators
Waterproof Footwear and Bottoms

	1997	1998	1999	<u>Jan. 1 - June 30</u>	
				1999	2000
Production					
Volume (000 pairs)	8,051	6,698	5,970	2,074	2,147
Percent Increase (Decrease)		(17)	(11)		4
Imports (000 pairs)					
China	418	494	675	25	34
Other Countries	116	85	26	14	15
Apparent Market					
Volume (000 pairs)	6,265	5,323	4,806	1,434	1,235
Percent Increase (Decrease)		(15)	(10)		(14)
Value (\$000)	120,607	114,952	100,610	28,604	19,964
Percent Increase (Decrease)		(5)	(12)		(30)
Producers' Sales and Market Share					
From Domestic Production (000 pairs)	5,732	4,744	4,108	1,403	1,183
From Domestic Production (% share)	91	89	85	98	96
Sales from Imports and Market Share					
China ¹ (000 pairs)	418	494	672	17	36
China ¹ (% share)	7	9	14	1	3
Average Prices (\$/pair)					
Producers – From Production (\$/pair)	19.20	21.82	20.97	19.44	15.30
Importers – From China (\$/pair) ¹	17.69	17.43	18.53	13.87	18.35
Financial					
Operating Income – Domestic Sales ² (\$000)	1,814	708	660	P	P
Operating Income – % of net sales	5	2	2	P	P

Note: Production, sales, market and pricing data refer to waterproof footwear only, as negligible quantities of imports and production of bottoms for resale were reported.

P = protected information.

1. Includes a small amount of imports by the domestic producers.

2. Sales of Baffin, Genfoot and Rallye.

Source: *Public Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-004-6, Administrative Record, Vol. 1B at 19, 22, 24, 34 and 61.

Domestic production of waterproof footwear declined by about 2 million pairs between 1997 and 1999, but increased slightly in the first half of 2000 over the corresponding 1999 period.

The total apparent market for waterproof footwear declined by almost 1.5 million pairs between 1997 and 1999, representing a drop of 23 percent. It declined by a further 14 percent in the first half of 2000, as compared to the first half of 1999. The producers' domestic sales experienced a larger percentage drop over the period of inquiry, declining by 28 percent (in excess of 1.6 million pairs) between 1997 and 1999 and by a further 16 percent in the first half of 2000 from the corresponding 1999 period. The decline in sales by the producers resulted in a market share loss of 6 percentage points between 1997 and 1999, and a further loss of 2 percentage points in the first half of 2000 from the corresponding 1999 period.

Imports from China increased by over 250,000 pairs between 1997 and 1999, an increase of over 60 percent. Meanwhile, imports from all other countries combined declined by some 90,000 pairs. As a result, imports from China doubled their market share. The gains were not only at the expense of domestic producers but also at the expense of imports from other countries. Imports in the first half of the years 1999 and 2000 were very small, reflecting the seasonal nature of the products being imported.¹⁰

The domestic producers' average prices for sales from domestic production increased by \$2.62 per pair in 1998 over 1997, but then dropped by \$0.85 in 1999 from the previous year. The average price for sales of imports from China fell by \$0.26 per pair in 1998 from 1997, but increased by over \$1.00 in 1999 compared to the previous year. Average prices for sales of imports from China remained below the prices of the domestic producers throughout the Tribunal's period of inquiry. The above average prices for imports and domestic goods reflect a diverse product mix that can vary from year to year. Hence, these average prices are not indicative of import and domestic prices on particular products or product lines.

The domestic industry's financial performance declined in fiscal year 1998 from fiscal year 1997, as net operating income declined from 5 percent to 2 percent of net domestic sales. It remained at the 1998 level in 1999.

To sum up, the market for waterproof footwear contracted substantially between 1997 and 1999. At the same time, the domestic waterproof footwear industry experienced a reduction in domestic sales and a decline in market share over this period. On the other hand, imports from China increased. There was no marked upward or downward trend in average domestic and import prices. Although the domestic industry's net income as a percentage of sales declined in fiscal 1998, it stabilized at the 1998 level in fiscal year 1999.

Effects of the Dumping

Having examined the state of the Canadian market and industry for waterproof footwear, the Tribunal will now consider whether the dumping of the subject goods has caused material injury to the domestic industry. In this regard, the focus of the Tribunal's analysis in this case will be to examine the cause and effect of the significant market decline that has occurred over the last few years and the concomitant rise in imports from China.

First, in terms of the market's overall decline, it is clear from the evidence that this is a direct result of climatic conditions. More particularly, there has been a succession of long and relatively warm autumns and late winters over the last two to three years that have had a strong adverse effect on the market, reducing overall demand and industry sales.¹¹ In this connection, certain major retailers testified that their budgets allocated to the waterproof footwear category have already been cut substantially and are likely to be cut even further because of the reduced consumer demand that has flowed from these climatic conditions.¹² It is obvious to the Tribunal that this situation has had a significant negative effect on the domestic industry's performance in all respects. Indeed, the domestic industry acknowledges this.¹³

10. Imports were predominantly waterproof footwear products sold for the spring/summer season. This is generally a slower season than the fall/winter season; therefore, first half imports are not a good indication of annual totals.

11. See, for example, *Transcript of In Camera Hearing*, Vol. 1, 7 November 2000, at 47, and Vol. 2, 8 November 2000, at 100; and *Transcript of Public Hearing*, Vol. 2, 8 November 2000, at 357.

12. See, for example, *Transcript of In Camera Hearing*, Vol. 2, 8 November 2000, at 91-92 and 138-39.

13. See, for example, *Transcript of In Camera Hearing*, Vol. 1, 7 November 2000, at 47.

Milder weather has also affected the types and styles of waterproof footwear demanded by consumers. In this regard, one major retailer testified that there was a distinct trend to lighter, more fashion-oriented styles for the fall and winter, especially among women.¹⁴ As will be discussed further, the trend towards lighter boots has also been unfavourable to the domestic industry, in the Tribunal's estimation, since the focus of its production has been on the more traditional type of winter boots.

Turning to imports from China, it is clear from the statistics noted earlier that imports of waterproof footwear from China have been on the increase, while the overall market has been contracting. A close examination of the nature of these imports reveals a connection between these imports, the climatic conditions that have prevailed and the related new consumer preferences.

Specifically, the evidence shows that approximately two thirds of the total imports from China in 1999 consisted of FWF, a product that, according to the retailer witnesses, satisfied consumer demand for lighter-weight waterproof footwear with a fashion flair.¹⁵ Another product that was imported from China in the second half of 2000, by M&M, was a fully waterproof boot with a PU (polyurethane) or PVC sole and a nylon or PU top. This M&M boot also met a similar demand for lighter, fashion-oriented footwear that suited the milder climatic conditions, according to the retailers. The retailer witnesses further testified that there were no comparable products manufactured by the domestic industry.

In terms of FWF, the Tribunal notes that it is clear from the evidence that the domestic industry did not produce this type of product over the period of inquiry, even though the retailers have made known their need for it to the domestic producers.¹⁶ Indeed, the evidence suggests that the domestic producers have been unenthusiastic about manufacturing FWF because, among other things, they are sceptical about the strength and sustainability of demand for this type of footwear.¹⁷ Nevertheless, the domestic industry contends that sales of its products have been displaced by sales of FWF because, generally speaking, one type of waterproof footwear is functionally substitutable for another, regardless of the individual style and fashion.¹⁸

As noted above under the section dealing with like goods, the Tribunal considers that all types of waterproof footwear have certain important characteristics in common. However, this does not mean that all types of footwear compete directly against, and are fully substitutable for, each other. In the Tribunal's estimation, in this case, the evidence supports the conclusion that FWF occupies a distinct market niche. The Tribunal notes further that the major retailers have testified that their sales of FWF have not caused domestic sales of other products to suffer.¹⁹ According to the testimony, FWF competed more with boots in the non-waterproof category, such as hiking boots and sporting footwear, than with domestic waterproof products.²⁰ The Tribunal has no reason to doubt this testimony in the absence of any specific evidence of FWF taking sales from other domestic products, or any evidence that the price of domestic products had to be reduced because of sales of FWF.

14. *Transcript of Public Hearing*, Vol. 2, 8 November 2000, at 232-33.

15. See, for example, Importer's Exhibit B-6, para. 8, Administrative Record, Vol. 13.

16. Exporter's Exhibits B-1, para. 14, B-6, para. 10, B-10, para. 9, and B-17, para. 12, Administrative Record, Vol. 13.

17. See, for example, *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 26-29, 34-35, 38 and 137.

18. *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 127.

19. See, for example, Importer's Exhibits B-1, para. 18, and B-6, para. 12, Administrative Record, Vol. 13.

20. *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 32-33 and 194-95.

In the Tribunal's opinion, similar considerations apply to the women's boots recently imported by M&M.²¹ Like the FWF, the Tribunal finds that the M&M product does not compete with domestic products. In both cases, unique climatic conditions have driven demand for light winter footwear. In the absence of equivalent offerings by domestic producers, that demand has been met by imports from China. Accordingly, imports from China have risen in a declining market and, in the Tribunal's estimation, this rise, insofar as it is attributable to these particular imported products, has not caused injury to domestic production.

If imports of the FWF and the M&M footwear from China are set aside, the statistics show that the balance of imports from China comprise a small proportion of the market, representing less than 5 percent of the market in 1999.²² Moreover, although prices of Chinese producers were, on average, lower than those of domestic producers over the period of analysis, this appears to be largely related to the significant volumes of FWF that are part of the import product mix.²³ FWF occupies a relatively low price point, while sales of waterproof footwear from domestic production were largely concentrated on higher-priced, warm-lined winter footwear, in particular rubber bottomed/leather topped footwear.²⁴

Looking at the composition of imports from China minus FWF and the M&M product, the evidence shows that about 60 percent of these imports in 1999 consisted of plastic-bottomed/fabric-topped waterproof footwear and the balance of seasonal footwear, such as garden clogs and plastic duck shoes. With regard to the plastic-bottomed/fabric-topped footwear, the industry has submitted little specific evidence of lost business or negative price effects with regard to this category. Indeed, the evidence shows that the average selling price for boots from China in this product line was actually higher than average domestic prices.²⁵

With regard to the plastic duck shoes and garden clogs, there is some evidence that imports from China have come in at low prices and have suppressed domestic prices.²⁶ However, the evidence shows that, for the most part, these products have been brought in by retailers to offer consumers a lower price point for this type of footwear, while still offering the domestic products at their traditional price points.²⁷ Despite this, it is evident from the statistics that imports from China have only had limited success in this area. Indeed, according to the evidence, despite offers from importers, certain major retailers chose not to import duck shoes from China or garden clogs because they were satisfied with the business generated by their domestic purchases, and they saw no competitive reason to change their sourcing patterns.²⁸

In sum, the evidence suggests that, over the last few years, imports from China have been successful in filling certain market niches, such as light, fashion-oriented waterproof footwear, where they do not

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21. It should be noted that M&M's imports are not included in the Tribunal's compiled data, because these imports were entered in the second half of 2000. Refer to *Transcript of In Camera Hearing*, Vol. 2, 8 November, 2000, at 155.
 22. *Protected Pre-hearing Staff Report*, revised 26 October 2000, Tribunal Exhibit NQ-2000-004-7A (protected), Administrative Record, Vol. 2A at 95.
 23. Although M&M's imports of women's NBC boots are not included in the Tribunal's compiled data, similar considerations would apply, since they are sold at similar price points to FWF.
 24. *Protected Pre-hearing Staff Report*, revised 26 October 2000, Tribunal Exhibit NQ-2000-004-7A (protected), Administrative Record, Vol. 2A at 95-97.
 25. *Protected Pre-hearing Staff Report*, revised 26 October 2000, Tribunal Exhibit NQ-2000-004-7A (protected), Administrative Record, Vol. 2A at 97.
 26. Manufacturer's Exhibits A-3 (protected), para. 13-14, A-5 (protected), para. 9-10 and A-7 (protected), para. 10-11, Administrative Record, Vol. 12.
 27. *Transcript of In Camera Hearing*, Vol. 2, 8 November 2000, at 76-78.
 28. *Transcript of In Camera Hearing*, Vol. 2, 8 November 2000, at 120-21 and 151.

compete directly with domestic producers. Those areas where imports from China do compete directly, such as clogs and duck shoes, comprise a relatively small portion of total industry sales.²⁹ In these areas, the evidence shows that imports from China have made limited inroads and their effect on the domestic industry has been correspondingly small. Given this, the Tribunal is of the view that the industry's performance indicators over the last few years largely reflect the adverse effects of warm and unusual climatic conditions in Canada. While the dumping of waterproof footwear from China may have had some negative effect, the Tribunal is of the view that it was not material.

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. In considering this question, the Tribunal is guided by subsection 37.1(2) of the SIMA Regulations and may take into account, for the purposes of determining whether the dumping of goods is threatening to cause material injury, factors such as whether there has been a significant rate of increase of dumped imports of waterproof footwear and bottoms in Canada, whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and any other relevant factors. Moreover, the threat, if one exists, must be clearly foreseen and imminent.³⁰

The Tribunal considers that, in this case, there has been a recent significant development that may well alter the scope and composition of imports of waterproof footwear and bottoms from China in the near future. This development is the recent bankruptcy of Kaufman, a Canadian manufacturer of one of the most recognized and respected brands in waterproof and other winter footwear, namely, Sorel.

Sorel footwear had been sold by Kaufman in Canada for many years, as well as in the United States and other markets. The Sorel products feature rubber-bottomed and leather- or fabric-topped styles designed for a temperature range down to extreme cold, and they served the medium- and high-priced segments of the market. With the strength of its Sorel brand, Kaufman held an important share of the Canadian market in waterproof footwear.³¹

On July 21, 2000, Kaufman declared bankruptcy. Many of its assets were subsequently purchased by other Canadian producers. However, one of Kaufman's most valuable assets, the Sorel brand name, was acquired on September 11, 2000, by Columbia, a well known U.S. company noted for its supply of winter clothing and footwear that outbid a Canadian producer.³²

The significance of this development is that Columbia subsequently disclosed, in mid-September 2000, that it intended to supply the market with Sorel footwear manufactured in Asia.³³ In testimony, industry witnesses contended that this undoubtedly meant that the Sorel brand would be produced in China. In support

29. *Protected Pre-hearing Staff Report*, revised 26 October 2000, Tribunal Exhibit NQ-2000-004-7A (protected), Administrative Record, Vol. 2A at 95-97.

30. See, for example, *Certain Cold-rolled Steel Sheet Products, Findings (27 August 1999), Statement of Reasons (13 September 1999)*, NQ-99-001 (CITT).

31. *Protected Pre-hearing Staff Report*, 27 September 2000, Tribunal Exhibit NQ-2000-004-7 (protected), Administrative Record, Vol. 2A at 69-73.

32. *Transcript of In Camera Hearing*, Vol. 1, 7 November 2000, at 35.

33. Manufacturer's Exhibit A-1, para. 32, Administrative Record, Vol. 11.

of its contention, the industry noted that Columbia has a record of producing waterproof footwear in China and, in fact, already sells waterproof footwear of Chinese origin in Canada.³⁴

The Tribunal is of the view that this development could have serious adverse consequences for the Canadian industry. Columbia has a well-established marketing and distribution network in Canada. It will probably use these resources to offer the Sorel brand to its many customers in Canada, along with its other brands, with a view to securing the sizeable share of the market previously held by Sorel under Kaufman. If Sorel waterproof footwear is made in China and offered in Canada at dumped prices, as the evidence suggests is likely, this could quickly destabilize prices in the traditional Canadian winter boot market, which has been the mainstay of the Canadian industry.

In the Tribunal's opinion, the potential threat posed by the Sorel development is exacerbated by the fact that the range and quality of waterproof footwear produced in China have made enormous strides in recent years.³⁵ Indeed, in some product areas, such as those of duck shoes and garden clogs, Chinese factories have been able to reproduce domestic styles so well that it is hard to distinguish domestic from imported products.³⁶ This reflects, in part, the flow of capital, expertise and technology in the footwear sector from other countries to China in recent years.³⁷ If this technology were to be applied to products, such as Sorel winter boots, that are situated at the core of the domestic industry's production, this could threaten the domestic industry's existence.³⁸

The foregoing considerations, combined with China's huge production capacity,³⁹ its strong export orientation⁴⁰ and its propensity to dump,⁴¹ are all potential risks that must be considered, in this case, when evaluating the threat of injury. Taking all these considerations into account, the Tribunal has concluded that, in the absence of anti-dumping duties, the domestic industry would face a threat of material injury from dumped imports from China that is clearly foreseen and imminent.

REQUESTS FOR EXCLUSIONS

In examining requests for product exclusions, the Tribunal, in the past, has considered whether the domestic industry produces the product or substitutable or competing products.⁴² It also considered whether

34. *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 14 and 142; and *Transcript of In Camera Hearing*, Vol. 1, 7 November 2000, at 31-32 and 47-48.

35. See, for example, *Transcript of In Camera Hearing*, Vol. 1, 7 November 2000, at 34.

36. Manufacturer's Exhibits (physical), comparing A-15 with A-16, and comparing A-17 with A-18; *Transcript of In Camera Hearing*, Vol. 1, 7 November 2000, at 34; and Manufacturer's Exhibit A-4, para. 11, Administrative Record, Vol. 11.

37. *Transcript of Public Hearing*, Vol. 2, 8 November 2000, at 323; and Importer's Exhibit D-1, para. 15, Administrative Record, Vol. 13.

38. See, for example, Manufacturer's Exhibit A-2, para. 14, Administrative Record, Vol. 11.

39. *Public Pre-hearing Staff Report*, 27 September 2000, Tribunal Exhibit NQ-2000-004-6, Administrative Record, Vol. 1B at 56; and *Transcript of In Camera Hearing*, Vol. 1, 7 November 2000, at 34.

40. *Public Pre-hearing Staff Report*, 27 September 2000, Tribunal Exhibit NQ-2000-004-6, Administrative Record, Vol. 1B at 58-59.

41. *Waterproof Rubber Footwear, Finding and Statement of Reasons* (23 April 1982), ADT-2-82 (ADT); *Certain Waterproof Footwear, Finding* (4 February 1993), *Statement of Reasons* (19 February 1993), NQ-92-005 (CITT); and Tribunal Exhibits NQ-2000-004-29, -30, -31, -32, -33, -34, Administrative Record, Vol. 1A at 1-188.

42. See, for example, *Machine Tufted Carpeting, Finding* (21 April 1992), *Statement of Reasons* (6 May 1992), NQ-91-006 (CITT).

the domestic industry is an “active supplier” of the product⁴³ and whether the requested exclusion was to fill a market niche or was unique.⁴⁴

In this case, four requests for exclusions have been made. The Tribunal’s views on each of these requests are as follows.

FWF

During the course of the inquiry, the Tribunal had the opportunity to examine physical exhibits that represented different styles of FWF.⁴⁵ Based on this examination, the Tribunal finds that FWF is quite distinguishable from domestic waterproof footwear. Indeed, neither through physical exhibits nor through any other evidence has the domestic industry demonstrated to the Tribunal that it produces waterproof footwear that is even comparable to FWF in terms of fashion, style, appearance and price point.

Moreover, the evidence shows that the manufacturing process for FWF is different from that for domestically produced like goods and that to produce FWF would require considerable investments in time and money by the domestic industry.⁴⁶ As noted earlier, the domestic industry has been reluctant to make these investments because it is unsure whether FWF represents more than a fad.⁴⁷ At present, there is no evidence of any concrete plans to produce FWF.⁴⁸ The evidence further shows that, even if the domestic industry decided to produce FWF, the time that it would take to bring the first FWF products to market could be as long as two years.⁴⁹

The Tribunal notes that the domestic industry has stated that it might produce FWF if the price point for this product were higher. However, according to the retailers, at higher price points, the demand for FWF would be severely curtailed or eliminated.⁵⁰ It follows that an anti-dumping duty on FWF would likely simply shrink the market for this product and not necessarily provide any benefit to the domestic industry.

The Tribunal also notes the domestic industry’s concern that excluding FWF might lead to the flocking of certain other waterproof footwear that, heretofore, has not been flocked, so as to circumvent any injury finding. On this point, the retailers testified that the flocking of waterproof footwear, other than the types and styles being imported, would have no consumer appeal and be unmarketable.⁵¹ The Tribunal agrees with the retailers. In any event, exclusion wording can be devised to apply only to the types and styles of FWF for which the request has been made.

43. See, for example, *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate, Finding* (6 May 1993), *Statement of Reasons* (21 May 1993), NQ-92-007 (CITT).

44. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products, Finding* (2 July 1999), *Statement of Reasons* (19 July 1999), NQ-98-004 (CITT).

45. Importer’s Exhibits B4, B5, B8, B9, B12, B13, B14, B15, B19 and B20 (physical).

46. Manufacturer’s Exhibit A-2, para. 17, Vol. 11; and *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 60-61 and 133-34.

47. See, in particular, *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 33-38 and 137.

48. See, for example, *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 50-51 and 64-67.

49. See, in particular, *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 51-53, 190-91, 198-99 and 203.

50. See, in particular, *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 189 and 198.

51. *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 195-97, 200-201, and 205-209.

Having regard to the foregoing, the Tribunal finds that the FWF is neither produced nor about to be produced in Canada. The Tribunal also finds that there are no substitutable products available from domestic production. Therefore, this request for exclusion is granted.

Women's NBC Boots

During the course of the hearing, the Tribunal also examined physical exhibits of women's NBC boots by M&M.⁵² Here, as with FWF, the Tribunal saw no domestic products that were comparable in appearance, style or fashion. The Tribunal also examined drawings of a product that the domestic industry considered to be comparable to the women's NBC boots that was in the planning stages of production by a domestic producer.⁵³ However, in the Tribunal's opinion, the planned product has more in common with the existing domestic products, insofar as appearance, style and fashion are concerned, than with the imported women's NBC boots.

The Tribunal notes further that the distinct appearance and attractiveness of women's NBC boots are, in large part, a function of their unique construction. Specifically, women's NBC boots have a bottom which allows a nylon or other upper to be affixed in a way which gives the boots a look that resembles women's non-waterproof footwear fashions. In contrast, the domestic industry's products are manufactured with the conventional boat-like bottom, characteristic of typical winter waterproof footwear that promotes function over fashion. Moreover, the women's NBC boots are designed and manufactured to achieve a certain fashion look that can be coordinated with other outerwear products.⁵⁴

In addition, as in the case of FWF, the market for women's NBC boots is largely at a particular price point. Raising this price point by applying anti-dumping duties would, in all likelihood, simply reduce or eliminate the market without benefiting the domestic producers.⁵⁵

Having regard to the foregoing, the Tribunal finds that the imported women's NBC boots are neither produced nor about to be produced in Canada. The Tribunal also finds that there are no substitutable products available from domestic production. Therefore, in the Tribunal's opinion, women's NBC boots do not compete with domestic production of like goods, and this request for exclusion is granted.

Waterproof Bottoms

Hichaud has requested an exclusion for waterproof bottoms imported from China. Hichaud does not claim, nor does the evidence show, that the imported bottoms are in any meaningful way different or distinguishable from the bottoms that are produced in Canada.⁵⁶ Moreover, the domestic industry has indicated that it is willing and able to supply the firm with waterproof bottoms.⁵⁷ Providing an exclusion would clearly cause the domestic industry to lose sales that it would otherwise be able to make to secondary producers such as Hichaud, in the absence of dumped bottoms. The Tribunal notes that Hichaud's exclusion

52. Importer's Exhibits E3, E4, E5 (physical).

53. Tribunal Exhibit NQ-2000-004-RI-1H, Administrative Record, Vol. 9 at 2-3; and Tribunal Exhibit NQ-2000-004-RI-II (protected), Administrative Record, Vol. 10 at 1-2.

54. See, for example, *Transcript of Public Hearing*, Vol. 2, 8 November 2000, at 231-32.

55. See, in particular, *Transcript of Public Hearing*, Vol. 2, 8 November 2000, at 233-34.

56. *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 18; and Importer's Exhibits F-1 and F-2, Administrative Record, Vol. 13.

57. *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 13.

request is based, in large part, on the grounds that it is a small manufacturer that gives employment to handicapped workers. These, however, are not legitimate grounds for exclusion. This request is denied.

Miners' Safety Footwear

Cougar has requested an exclusion for certain safety footwear used primarily in the mining industry. According to the evidence, the footwear for which the exclusion is requested was formerly made by Kaufman.⁵⁸ The evidence also shows that, following Kaufman's bankruptcy, one of the domestic producers, Acton, purchased Kaufman's production equipment for the specific safety footwear in question. Acton testified that it is about to begin production of this safety footwear and has been marketing it at trade shows.⁵⁹

Cougar has contended that Acton has not been, and will not be, able to meet the quality standards for this footwear that Kaufman had achieved. In support of this claim, Cougar has submitted evidence that some miners' boots that Acton was currently making were returned by unsatisfied customers.⁶⁰

The Tribunal notes that the returns represented a very small proportion of boots shipped.⁶¹ Moreover, Acton has a good reputation as a specialized, high-end boot-maker, and the Tribunal has no reason to believe that Acton will be unable to supply the market for this product in the future. Accordingly, on this basis alone, the request is denied.

CONCLUSION

For the foregoing reasons, the Tribunal finds that that the dumping in Canada of the aforementioned goods originating in or exported from China has not caused, but is threatening to cause, material injury to the domestic industry, excluding:

- fully waterproof polyvinyl chloride injection-moulded footwear consisting of a one-piece construction where the entire surface, other than the sole portion, is coated with an adhesive and flocked with small particles of suede, suede dust or suede powder, whether or not trimmed with other materials and however fastened; and
- women's waterproof footwear consisting of a polyvinyl chloride or polyurethane injection-moulded sole of non-boat-like construction and a polyurethane or nylon upper that is treated and affixed to the sole in a manner that makes the boot fully waterproof, whether or not trimmed with other materials and however fastened.

Pierre Gosselin
Pierre Gosselin
Presiding Member

58. *Transcript of Public Hearing*, Vol. 2, 8 November 2000, at 373.

59. *Transcript of Public Hearing*, Vol. 1, 7 November 2000, at 19-21.

60. *Transcript of Public Hearing*, Vol. 2, 8 November 2000, at 370.

61. Importer's Exhibit G-2A (protected), Administrative Record, Vol. 14.

Richard Lafontaine
Richard Lafontaine
Member

Zdenek Kvarda
Zdenek Kvarda
Member