



Ottawa, Tuesday, January 7, 2003

Inquiry No. NQ-2002-002

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

**WATERPROOF FOOTWEAR AND WATERPROOF FOOTWEAR BOTTOMS  
ORIGINATING IN OR EXPORTED FROM HONG KONG, CHINA;  
MACAO, CHINA; AND VIETNAM**

**FINDINGS**

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 certain waterproof footwear and waterproof footwear bottoms, constructed wholly or in part of rubber or plastic, worn over the foot or shoe, originating in or exported from Hong Kong, China; Macao, China; and Vietnam, 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 September 9, 2002, and of a final determination dated December 9, 2002, that the aforementioned goods have been dumped and that the margins of dumping of the goods are not insignificant.

The Canadian International Trade Tribunal determines, following the final determination of the Commissioner of the Canada Customs and Revenue Agency, pursuant to subsection 42(4.1) of the *Special Import Measures Act*, that the volume of dumped goods from Hong Kong, China, was negligible, as the volume of those goods was less than 3 percent of the total volume of the goods that were released into Canada and that were of the same description as the dumped goods. Consequently, the Canadian International Trade Tribunal terminates its inquiry with respect to Hong Kong, China.

The Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping of the aforementioned goods originating in or exported from Macao, China; and Vietnam has not caused material injury and is not threatening to cause material injury to the domestic industry.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Pierre Gosselin  
Pierre Gosselin  
Member

Richard Lafontaine  
Richard Lafontaine  
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: December 9 to 12, 2002  
Date of Findings: January 7, 2003

Tribunal Members: Patricia M. Close, Presiding Member  
Pierre Gosselin, Member  
Richard Lafontaine, Member

Director of Research: Selik Shainfarber

Lead Researcher: Douglas Kemp

Economist: Ihn Ho Uhm

Statisticians: Lise Lacombe  
Rhonda Heintzman

Counsel for the Tribunal: Michèle Hurteau  
Roger Nassrallah

Registrar Officer: Karine Turgeon

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

**(Representing Domestic Producers)**

Richard G. Dearden  
Scott P. Little  
Maureen Murphy  
Andrew Bradley  
Julia Milosh  
for Columbia Sportswear Company and Columbia  
Sportswear Canada Limited

Luong Van Tu  
Ministry of Trade  
The Socialist Republic of Vietnam

**(Importers/Other)**

Ottawa, Wednesday, January 22, 2003

Inquiry No. NQ-2002-002

**WATERPROOF FOOTWEAR AND WATERPROOF FOOTWEAR BOTTOMS  
ORIGINATING IN OR EXPORTED FROM HONG KONG, CHINA;  
MACAO, CHINA; AND VIETNAM**

**DECISION**

The Canadian International Trade Tribunal determines that the volume of dumped goods from Hong Kong, China, was negligible, as the volume of those goods was less than 3 percent of the total volume of the goods that were released into Canada and that were of the same description as the dumped goods. Consequently, the Canadian International Trade Tribunal terminates its inquiry with respect to Hong Kong, China.

The Canadian International Trade Tribunal hereby finds that the dumping in Canada of certain waterproof footwear and waterproof footwear bottoms, constructed wholly or in part of rubber or plastic, worn over the foot or shoe, originating in or exported from Macao, China; and Vietnam has not caused material injury and is not threatening to cause material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	December 9 to 12, 2002
Date of Findings:	January 7, 2003
Date of Reasons:	January 22, 2003
Tribunal Members:	Patricia M. Close, Presiding Member Pierre Gosselin, Member Richard Lafontaine, Member
Director of Research:	Selik Shainfarber
Lead Researcher:	Douglas Kemp
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Sportswear Canada Limited

Luong Van Tu  
Ministry of Trade  
The Socialist Republic of Vietnam

**(Importers/Other)****Witnesses:**

François Soucy  
President and Chief Operating Officer  
Acton International Inc.

Pat Vitulli  
Vice-President  
Rallye Footwear Inc.

Alain Drolet  
Vice-President, Marketing  
Régence Inc.

Doug Hamilton  
President  
Columbia Sportswear Canada Limited

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

Ingrid Gysbers  
National Business Manager  
Luggage & Footwear  
Sears Canada

Thor Blyschak  
Consultant  
Rallye Footwear Inc.

Paul Hubner  
President  
Baffin Inc.

Gordon Cook  
President  
Genfoot Inc.

David Greulich  
Sales Manager—Sorel  
Columbia Sportswear Canada Limited

Tim Boyce  
Seasonal Footwear Buyer  
Wal-Mart Canada Corp.

Ron King  
Vice-President, Merchandising  
Town Shoes

Tran Manh Thu  
Chairman  
Vietnam Leather & Footwear Association

Nguyen Minh Chi  
Director General  
Law Department  
Ministry of Trade  
The Socialist Republic of Vietnam

Address all communications to:

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



Ottawa, Wednesday, January 22, 2003

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respecting:

**WATERPROOF FOOTWEAR AND WATERPROOF FOOTWEAR BOTTOMS  
ORIGINATING IN OR EXPORTED FROM HONG KONG, CHINA;  
MACAO, CHINA; AND VIETNAM**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member  
PIERRE GOSSELIN, Member  
RICHARD LAFONTAINE, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping in Canada of certain waterproof footwear and waterproof footwear bottoms, constructed wholly or in part of rubber or plastic, worn over the foot or shoe, (the subject goods) originating in or exported from Hong Kong, China (Hong Kong); Macao, China (Macao); and Vietnam has caused injury or retardation or is threatening to cause injury to the domestic industry.

On April 26, 2002, 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 certain waterproof footwear and waterproof footwear bottoms, originating in or exported from Hong Kong, China; Macao, China; and Vietnam had been dumped. On April 29, 2002, 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 June 25, 2002, 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.

On July 17, 2002, pursuant to paragraph 39(1)(a) of SIMA, the Commissioner gave notice that the period of investigation for making a preliminary determination of dumping had been extended from 90 to 135 days from the date of initiation.

On September 9, 2002, the Commissioner issued a preliminary determination of dumping with respect to the subject goods originating in or exported from Hong Kong, China; Macao, China; and Vietnam. The Commissioner was satisfied, as a result of the preliminary investigation, that these goods had

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1. R.S.C. 1985, c. S-15 [hereinafter SIMA].

been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.<sup>2</sup>

On September 10, 2002, the Tribunal issued a notice of commencement of inquiry.<sup>3</sup> 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 December 9, 2002, the Commissioner issued a final determination that the subject goods originating in or exported from Hong Kong, China; Macao, China; and Vietnam had been dumped and that the margins of dumping were not insignificant.<sup>4</sup>

Public and *in camera* hearings (collectively, the hearing) were held in Ottawa, Ontario, from December 9 to 12, 2002. SMAC and its members, Acton International Inc. (Acton), Baffin Inc. (Baffin), Rallye Footwear Inc. (Rallye), Régence Inc. (Régence) and Genfoot Inc. (Genfoot), and Columbia Sportswear Canada Limited (Columbia) made submissions and were represented by counsel at the hearing. The Government of the Socialist Republic of Vietnam made a submission, and a representative of that government and a representative of the Vietnam Leather & Footwear Association appeared 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, 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 findings on January 7, 2003.

## RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's investigation covered imports of the subject goods originating in or exported from Hong Kong, China; Macao, China; and Vietnam during the period from January 1, 2001, to March 31, 2002.

### Hong Kong

No complete submissions were received from exporters of the subject goods in Hong Kong. Margins of dumping for exporters in Hong Kong were determined based on information received from other exporters during the investigation. The exporters in Hong Kong that were requested to provide a complete response, but failed to do so, were given margins of dumping equal to the highest margin of dumping found for exporters that co-operated in the investigation. The exporters in Hong Kong that were not asked to complete questionnaires were given margins of dumping equal to the weighted average margin of dumping for exporters that completed questionnaires and co-operated with the Canada Customs and Revenue Agency (CCRA). The weighted average margin of dumping for imports from Hong Kong was 51.5 percent.

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2. Canada Customs and Revenue Agency, *Preliminary Determination of Dumping*, 9 September 2002, Tribunal Exhibit NQ-2002-002-01, Administrative Record, Vol. 1 at 28.

3. C. Gaz. 2002.I.2873.

4. Canada Customs and Revenue Agency, *Final Determination of Dumping*, 9 December 2002, Tribunal Exhibit NQ-2002-002-04, Administrative Record, Vol. 1 at 101.31.

## **Macao**

Only one exporter in Macao provided a complete response to the CCRA's request for information. That exporter did not have sales of the subject goods in its domestic market, and, therefore, normal values were determined by ministerial specification. Normal values were calculated as the aggregate of cost of production, plus a reasonable amount for administration, selling and all other costs, plus a reasonable amount for profit. Export prices were calculated based on the lesser of the exporter's selling price or the importer's purchase price. The weighted average margin of dumping for imports from Macao was 25.5 percent.

## **Vietnam**

In the past, the CCRA considered that the Government of the Socialist Republic of Vietnam maintained a monopoly on its export trade in waterproof footwear and controlled domestic prices of waterproof footwear. In the last few years, however, that government has taken a number of measures to reform its economic structure, seeking to liberalize its economy. After assessing information provided by the Government of the Socialist Republic of Vietnam and exporters of the subject goods, the Commissioner was of the opinion that that government no longer has a monopoly or substantial monopoly on its export trade in waterproof footwear. Consequently, the CCRA decided to apply the market economy rule to the subject goods produced in Vietnam.

Three Vietnamese producers completed and returned questionnaires to the CCRA. However, since none of these exporters had domestic market sales, normal values could not be determined under section 15 of SIMA. Therefore, for one exporter, the CCRA calculated normal values under the "cost plus" provision of paragraph 19(b) of SIMA. For the other two exporters, normal values were determined by ministerial specification. In each case, export prices were based on the lesser of the exporter's selling price or the importer's purchase price. The weighted average margin of dumping for imports from Vietnam was 30.9 percent.

## **PRODUCT**

For the purposes of this inquiry, the goods are defined as waterproof footwear and waterproof footwear bottoms, constructed wholly or in part of rubber or plastic, worn over the foot or shoe, originating in or exported from Hong Kong, China; Macao, China; and Vietnam. 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 waterproof component that may be made of rubber or plastic. The goods subject to this inquiry include moulded clogs, waterproof safety footwear and waterproof footwear made of waterproof footwear bottoms combined with tops made of leather, textiles or other materials. They may be constructed with or without liners, linings, fasteners or safety features. Excluded from the definition of the subject goods are equestrian riding boots, ski boots and skating boots.

Waterproof footwear described as "waterproof rubber footwear" is produced, wholly or in part of natural rubber and/or synthetic rubber, by vulcanization, injection moulding or other processes. The term synthetic rubber includes thermoplastic rubber (TPR).

Waterproof footwear described as "waterproof plastic footwear" is constructed wholly or in part of plastic. It is made from plastic resins by injection moulding or other processes. The term "plastic" includes



polyvinyl chloride, polyurethane and other plastics. Polyvinyl chloride is the plastic most commonly used to date in this class of footwear.<sup>5</sup>

Domestically produced waterproof footwear is sold directly to major national retail chains, mass merchandisers, retail shoe chains and independent shoe chains. Domestic producers attend national and international footwear shows to get exposure, to promote and sell their product, and to see new fashion trends.

Waterproof footwear bottoms are industrial products that require further processing into waterproof footwear before being sold to retailers. Traditionally, footwear bottoms have been produced primarily by manufacturers of waterproof footwear for use in their own production. A small quantity of footwear bottoms are imported into Canada from the People's Republic of China (China) and assembled into like goods.

## DOMESTIC PRODUCERS

The complainant in this case is SMAC on behalf of six Canadian producers. The producers are: Acton, Acton Vale, Quebec; Baffin, Stoney Creek, Ontario; Chaussures Yeti Inc., Montréal, Quebec; Genfoot, Montréal, Quebec; Régence, Charlesbourg, Quebec; and Rallye, Ville d'Anjou, Quebec. According to SMAC, these producers account for more than 95 percent of the domestic production of like goods.

## POSITION OF PARTIES

### Party in Favour of an Injury Finding

#### SMAC

SMAC submitted that the dumping of the subject goods from Hong Kong, Macao and Vietnam has caused and is likely to cause material injury to the production of like goods in Canada.

SMAC submitted that the pricing of Sorel products imported into Canada by Columbia undercut, depressed and suppressed prices in the Canadian market. SMAC argued that the Sorel brand traditionally set the benchmark prices for other products. SMAC indicated that, for the fall of 2001, Columbia made major reductions in the prices of well-known styles of Sorel products. While there were increases in prices of some Sorel products for the fall of 2002, the pricing of selected styles of Sorel products imported by Columbia in 2002 was lower and, in some cases, significantly lower than the last known prices offered by Kaufman Footwear, Division of William H. Kaufman Inc. (Kaufman), two years previously. The most aggressive pricing of Sorel products in Canada appeared to be at the lower end of the Sorel price spectrum for each gender where market demand was relatively high and the greatest proportion of domestic production was directly affected.

With respect to the impact on the domestic industry in terms of an actual or potential decline in output, sales, market share and profits, SMAC contended that Columbia reduced the suggested retail price of Sorel products to the retail price level that Columbia thought was actually being achieved by retailers. SMAC alleged that Columbia could only have achieved this price by squeezing retail margins.

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5. Specific definitions respecting the subject waterproof footwear, as well as waterproof footwear excluded from this inquiry, may be found in the Commissioner's *Final Determination of Dumping*, Tribunal Exhibit NQ-2002-002-04, Administrative Record, Vol. 1 at 101.19-101.21.

In 2000, Rallye, under contract to a Canadian retailer, produced a substantial volume of Sorel products. In the fall of 2000, Sorel products ceased to be made in Canada, following the acquisition of the Sorel brand by Columbia, which imported them from Hong Kong, Macao and Vietnam. This also contributed to the decline in the output, sales, market share and profits of the domestic producers.

SMAC submitted that the shifting of integrated domestic production of uppers to the importation of uppers was due to the price suppression in the market caused by the lower benchmark pricing, which meant that the domestic producers had to move wherever they could to achieve cost savings on raw materials.

SMAC submitted that the wholesale prices for the fall of 2002 of Sorel products supplied to the Canadian market are, on average, substantially lower than the wholesale prices of Sorel products supplied to the U.S. market.

SMAC argued that the pricing of the Sorel products caused the destabilization of prices in the traditional Canadian winter boot market, which has been the mainstay of the domestic industry. SMAC quoted the Tribunal 24 months ago, in Inquiry No. NQ-2000-004,<sup>6</sup> as foreseeing that the importation of dumped Sorel products from China could quickly destabilize the Canadian winter boot market.

In SMAC's view, future injury is also likely, given that Mark's Work Wearhouse has already followed Columbia in importing waterproof footwear, and many others will therefore follow.

With respect to the scope of the product description, SMAC argued that the product definition need not be subdivided because there was already enough of a percentage of dumped goods to support a finding of injury. Further, retailers and consumers do not see a difference between the various types of rubber or between rubber and plastic. Unless there is an injury finding against plastic and rubber footwear, SMAC submitted that there would be a flood of imports from Hong Kong, Macao and Vietnam produced from components made in China.

### **Party Opposed to an Injury Finding**

#### Columbia

Columbia submitted that the domestic industry has not suffered material injury nor is it threatened with material injury from the imports of the subject goods into Canada.

With respect to the scope of the product description, Columbia submitted that the Tribunal cannot narrow the scope of the definition and that the rubber and plastic components are the materials from which the product is made. There is no class of goods issue, as there are no separate margins of dumping for plastic footwear and rubber footwear. In Columbia's submission, there is only one category of subject goods, which is waterproof footwear and bottoms of plastic or rubber. The Tribunal must make its determination as to whether there is injury or threat of injury from the entire production of the subject goods.

Columbia submitted that there is no injury or threat of injury to the domestic industry because, between 1999 and 2001, the apparent domestic market grew from 5.0 million pairs to 5.5 million pairs; the total domestic production of both rubber and plastic waterproof footwear increased; domestic sales grew by 6 percent in 2000 and 11 percent in 2001; the domestic industry's market share increased from 79 percent to 85 percent; export sales increased by 31 percent in 2000 and 75 percent in 2001; plant capacity and utilization rates increased; and gross margins remained stable. Moreover, there have been no imports of

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6. *Waterproof Footwear and Bottoms* (8 December 2000) (CITT).

plastic bottoms from Hong Kong, Macao and Vietnam. The only decrease was with respect to the sales of rubber footwear in 2001 due to the mild winter weather.

In terms of average wholesale prices, Columbia submitted that the pricing of Sorel products has not caused price suppression or price depression in the domestic market. Columbia's average price for men's, women's and children's waterproof footwear was greater than the average price of the like goods in each of those categories. Prices of Sorel products either increased or remained stable in 2002. Prices were set with regard to Columbia's pricing formula and the keystone retail margin of 50 percent. Further, prices for Sorel products paid by retailers were unrelated to the prices offered by the domestic industry. Columbia contended that the price points for the entry level subject goods were higher than the pricing of virtually identical goods produced by one of the domestic producers. Thus, Sorel products did not displace Canadian products.

With respect to Kaufman's pricing, Columbia argued that the prices for Sorel products sold by Kaufman in 1999 cannot be relied upon because that company was on the verge of bankruptcy and did not produce any products in 2000. While Kaufman had a price list for 2000, the Sorel products sold that year were supplied from inventory and discounted by the receiver. Moreover, the suggested retail price offered by Kaufman was often unrealistically high, and retailers sought to have the prices brought down by 10 to 15 percent to what the market would bear.

In terms of the alleged lost sales, Columbia submitted that, while Rallye produced Sorel products for Sears in 2000, Rallye could not have lost this sale, as this production was a unique opportunity. As for the other lost sales, Columbia argued that the evidence on the confidential record showed that none of those lost sales could be attributed to sales of Sorel products or other products from Macao and Vietnam.

Columbia argued that any injury to the domestic industry is due not to the dumping of the subject goods but to other factors. It pointed to the fact that the Sorel brand enjoys a high consumer recognition and a strong brand loyalty. In 2000, there was a void in the marketplace of Sorel products because Kaufman did not produce them. This void was filled by the domestic industry. However, when Columbia bought and started selling the Sorel brand, it was a natural consequence that Columbia would regain some of Kaufman's share.

As to the threat of injury, Columbia argued that it had to be based on positive evidence. Reference was made to retailers' statements of the continued place in their stores for "made in Canada" waterproof footwear. Furthermore, Columbia was not intending on taking over Kaufman's entire share of the market, given the intention of keeping prices up.

## ANALYSIS

### Preliminary Matters

The Tribunal's data indicate that the subject goods from Hong Kong were not a meaningful factor in the market at any time during the Tribunal's period of inquiry from 1999 to June 2002. Indeed, while some very minor volumes were reported by one importer in 1999 and 2000, the Tribunal's survey was unable to find imports of the subject goods from Hong Kong in 2001 or the first half of 2002.<sup>7</sup> Accordingly,

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7. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-002-07 (protected), Table 13, Administrative Record, Vol. 2.1 at 32. Although data for January to June 2002 were collected, these data are not good indicators for the full year, since imports typically arrive in the second half of the year.

the Tribunal considers the volume of the subject goods from Hong Kong to be negligible<sup>8</sup> and no longer considers Hong Kong to be a subject source. Therefore, pursuant to subsection 42(4.1) of SIMA, the Tribunal terminates its inquiry with respect to Hong Kong.

Turning to Macao and Vietnam, the survey found that the subject goods from these two sources first appeared in Canada in 2001, when they captured 7 percent of the market for waterproof footwear.<sup>9</sup> According to the evidence, all these goods from Macao and Vietnam were winter waterproof footwear made of natural rubber or TPR bottoms with uppers of leather, fabric or coated fabric.<sup>10</sup> Pursuant to subsection 42(3) of SIMA, the Tribunal shall make an assessment of the cumulative effect of the dumping of the goods to which the preliminary determination applies that are imported into Canada from more than one country, if it is satisfied that the margin of dumping from each of those countries is not insignificant, the volume of the goods from each of those countries is not negligible and an assessment of the cumulative effect is appropriate taking into account the conditions of competition. Given that the Tribunal heard no evidence or argument as to why the Tribunal should not cumulate the goods imported from these two sources, the Tribunal will, in its analysis of injury, cumulate imports from Macao and Vietnam.

### 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.

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 Commissioner defined the goods that were the subject of the dumping investigation as waterproof footwear and waterproof footwear bottoms, constructed wholly or in part of rubber or plastic, worn over the foot or shoe.

The question of the scope of the definition of the subject goods was raised at the hearing. SMAC argued that the product definition of the subject goods should not be subdivided into different classes of

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8. Imports of the subject goods are negligible under SIMA if their volume is less than 3 percent of the total volume of imports of the subject goods from all sources. Hong Kong is excluded under this provision because, during the CCRA’s period of investigation from January 2001 to March 2002, the data collected by the Tribunal indicate that there were no imports from this source. The Tribunal notes that the CCRA’s *Final Determination of Dumping* shows some imports of the subject goods from Hong Kong over this period. However, even if the CCRA’s figures are used instead of the Tribunal’s own figures, imports of the subject goods from Hong Kong would still be negligible as their volume is less than 3 percent of the total volume of imports of the subject goods.
  9. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-002-07 (protected), Administrative Record, Vol. 2.1 at 42.
  10. There were no imports of plastic winter waterproof footwear or seasonal waterproof footwear, such as duckies, clogs and red-soled rubber boots. There were also no imports of either plastic or rubber bottoms from Hong Kong, Macao or Vietnam.

goods. It argued that neither retailers nor consumers can distinguish between goods made of vulcanized natural rubber, TPR or plastic. Columbia agreed, and argued that the Tribunal would need separate margins of dumping for plastic footwear and rubber footwear to conclude that there are separate classes of goods.

Although the Tribunal is not bound by the Commissioner's definition of class of goods, the Tribunal heard no argument or evidence to convince it that, in this case, there is more than one class of goods. The Tribunal therefore finds that this inquiry relates to a single class of goods and that the goods of the above description constitute like goods to the subject goods within the meaning of subsection 2(1) of SIMA. 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**

The term "domestic industry" is defined in subsection 2(1) of SIMA 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.

Having determined that domestically produced waterproof footwear and waterproof footwear 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 now consists of six major producers of like goods. These six producers are members of SMAC, and each supported the complaint. Collectively, they account for more than 95 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**

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".

Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>11</sup> 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, their effect on prices in the domestic market for like goods and the impact of the dumped goods on the domestic industry, including actual or potential declines in domestic sales, market share, profits and financial performance. Subsection 37.1(3) of the 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.

### **Background**

The Tribunal notes that the train of events that preceded the emergence, in 2001, of imports of the subject goods from Macao and Vietnam began in July 2000, when Kaufman, one of the oldest and

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

best-known Canadian producers of waterproof footwear, declared bankruptcy.<sup>12</sup> Over its long history, Kaufman had been a major producer of waterproof footwear and owned one of the most recognized brands in this footwear category, namely, Sorel.<sup>13</sup> According to the evidence, sales of the Sorel brand comprised the overwhelming majority of Kaufman's total sales of waterproof footwear.<sup>14</sup>

In September 2000, Columbia acquired the Sorel trademark and associated intellectual property rights from Kaufman's receiver in bankruptcy for a sum of about \$12 million.<sup>15</sup> Columbia is a vendor of various brand-name products, including apparel and footwear and, generally, the goods that it markets are manufactured by others under supply arrangements. This is also the case for the subject goods.<sup>16</sup> Having acquired the Sorel trademark, Columbia had to decide where to source its supply of Sorel products. This decision pertained to supply for the 2001 winter season and thereafter, as, by September 2000, there was too little time to bring Columbia's Sorel products to market for the 2000 winter season.<sup>17</sup>

After considering its options, Columbia decided to source its supply of Sorel products for the Canadian market entirely from Macao and Vietnam. This decision is reflected in the data collected by the Tribunal. In 2001 and 2002 to date, the vast majority of the subject goods imported from Macao and Vietnam were imported by Columbia. Furthermore, most of the subject goods from these two sources are comprised of Sorel winter waterproof footwear.<sup>18</sup>

Against the foregoing background, SMAC has focused its claims of injury on the importation of Sorel waterproof footwear by Columbia from Macao and Vietnam, in 2001 and thereafter. More particularly, SMAC claims that the volume of subject goods from these two sources is substantial, that the prices at which Sorel footwear is being sold are both depressing and suppressing domestic prices and that, as a consequence, the domestic industry has suffered injury.

### **Volume of Subject Goods**

According to both industry and retailer witnesses, Kaufman had been expecting to produce and deliver Sorel boots that had been ordered by its customers for the 2000 winter season right up until the time of its bankruptcy in July 2000.<sup>19</sup> However, as a result of the financial difficulties that ultimately resulted in its bankruptcy, Kaufman was unable to produce Sorel or any other waterproof footwear for the 2000 winter season.<sup>20</sup> When it became clear that Kaufman could not deliver, there was confusion in the market, as both retailers and domestic suppliers scrambled to fill the void.

According to the evidence, Sears was able to arrange for a supply of some Sorel products to be manufactured by a domestic producer under a licensing arrangement with Kaufman's receiver in

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12. Manufacturer's Exhibit A-1, para. 17, Administrative Record, Vol. 11; Importer's Exhibit C-05, para. 12, Administrative Record, Vol. 13.

13. Manufacturer's Exhibit A-1, para. 39, Administrative Record, Vol. 11.

14. Importer's Exhibit C-06 (protected), para. 22, Administrative Record, Vol. 14.

15. *Supra* note 13 at para. 16. Many of Kaufman's other physical assets, including its footwear moulds and machinery, were acquired by one or another of the domestic producers.

16. Tribunal Exhibit NQ-2002-002-15.06, Administrative Record, Vol. 5A at 19.

17. Importer's Exhibit C-05, paras. 20, 23, 24, Administrative Record, Vol. 13.

18. Tribunal Exhibit NQ-2002-002-16.06E (protected), Administrative Record, Vol. 6 at 113.22; Tribunal Exhibit NQ-2002-002-16.06, Administrative Record, Vol. 6 at 85-86, 113.15-113.16.

19. *Supra* note 14.

20. *Supra* note 17 at para. 23.

bankruptcy.<sup>21</sup> In addition, there were some Sorel boots available in 2000 from Kaufman's inventory of 1999 production.<sup>22</sup> However, overall, the demand for Sorel boots in 2000 could not be met, according to the evidence.<sup>23</sup>

As a result, going into 2001, domestic retailers were quite anxious to have a supply of the Sorel brand for their customers. Many of these retailers had offered Sorel winter waterproof footwear to their customers for years and considered it to be a "must have" item for their shelves.<sup>24</sup> Indeed, according to several retailer witnesses, the Sorel brand had very strong customer loyalty and, frequently, shoppers asked specifically for it.<sup>25</sup> In the view of one major retailer witness, customers were indifferent to, or unaware of, where the Sorel products were made. The brand name and its quality are what drew customers to Sorel products.<sup>26</sup>

Given the foregoing, in the Tribunal's opinion, it is not surprising that, when Sorel products again became available from Columbia in 2001 through imports from Macao and Vietnam, Columbia quickly captured a certain percentage of the Canadian waterproof footwear market.<sup>27</sup> This simply reflected the strong pent-up demand for the Sorel brand.

In the Tribunal's opinion, the market share captured by Columbia from imports of the subject goods, in 2001, must be evaluated in light of the historical market share held by Kaufman. In this regard, the evidence shows that, in Kaufman's last year of production, 1999, it held somewhere between 10 and 15 percent of the total Canadian market for waterproof footwear, driven in large part by sales of Sorel products.<sup>28</sup> Against this benchmark, the share of the Canadian market captured by the Sorel brand under Columbia, in 2001, fell considerably short of its historical place in the market.

The Tribunal notes that, given the timing of this inquiry, data on imports of the subject goods for all of 2002 were not available. However, as part of a pricing survey conducted in November 2002, the Tribunal's staff gathered information on sales of major Sorel products and of domestic styles that compete with Sorel products. This survey indicates that Columbia's sales volumes of major Sorel styles were proceeding at about the same pace in 2002 as in 2001.<sup>29</sup> This suggests to the Tribunal that the return of Sorel products to the market in 2001 filled the void created by Kaufman's bankruptcy and that the current demand for Sorel products is being met in a stable, measured and orderly manner.

The Tribunal also notes that Columbia has refocused its approach to the market by reducing the number of Sorel styles that it is selling in Canada from the number that was sold by Kaufman<sup>30</sup> and that

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21. *Supra* note 17 at para. 25.

22. *Supra* note 17 at para. 24.

23. *Supra* note 17 at para. 25.

24. Importer's Exhibits C-07, para. 12, Administrative Record, Vol. 13 and C-09, paras. 10-11, Administrative Record, Vol. 13.

25. Importer's Exhibit C-09, para. 11, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 11 December 2002, at 290.

26. Importer's Exhibit C-09, para. 11, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 11 December 2002, at 307-08.

27. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-002-07B (protected), Administrative Record, Vol. 2.1 at 42.

28. *Supra* note 14 at paras. 21-22.

29. *Protected Pricing Report*, Tribunal Exhibit NQ-2002-002-07B (protected), Administrative Record, Vol. 2.1 at 176.

30. Importer's Exhibit C-03, para. 43, Administrative Record, Vol. 13.

these styles are being marketed to a much narrower range of retailers.<sup>31</sup> The evidence also shows that major Kaufman accounts have been dropped because Columbia felt that they would not represent the premium nature of the Sorel brand<sup>32</sup> and that, of the Kaufman accounts that were kept, Columbia is currently doing a smaller volume of business compared to that of Kaufman.<sup>33</sup> All these steps support Columbia's assertion that it has taken a responsible approach to marketing the Sorel brand in Canada following its acquisition from Kaufman.

Accordingly, the Tribunal does not find that there has been an increase in the volume of imports of the subject goods, such that it caused injury to the domestic industry.

## Prices

The Tribunal notes that the evidence submitted in this case shows that, in 2001, Columbia reduced the suggested retail price for several Sorel styles from the levels that were established by Kaufman in the price lists that it published in 1999 for the 2000 winter season. SMAC argued that the domestic industry had to reduce the prices of its competing brands and that this caused injury. Columbia argued that Kaufman's wholesale and suggested retail prices were, for some Sorel styles, unrealistically high and that it adjusted them accordingly. Columbia further argued that Sorel is a premium brand that is not priced in relation to, and is not a cause of any price erosion or suppression of, domestic brands.

In addressing these claims and counterclaims, the Tribunal will first examine the issue of whether Kaufman's price lists for the 2000 winter season are an appropriate benchmark for evaluating Columbia's pricing decisions in 2001. In this connection, the Tribunal notes that four major retailers testified at the inquiry, two called by Columbia, and two by the Tribunal. Three of these witnesses testified that some of Kaufman's Sorel styles typically sold in their stores at lower than Kaufman's suggested retail prices.<sup>34</sup> In fact, one witness testified that it was common knowledge among retailers that Kaufman's suggested retail prices were high and that most retailers had communicated their concerns on this matter to the manufacturer over the years.<sup>35</sup>

In the Tribunal's estimation, the testimony of these witnesses fully supports Columbia's explanation for the price reductions that it made on certain Sorel styles in 2001 and why the corresponding wholesale prices were reduced to make room for the "keystone" retail margin that Columbia aims to provide for its customers.<sup>36</sup> In the Tribunal's opinion, Columbia's price adjustments in 2001 were appropriate in the circumstances and based on sound business practice. Further, the Tribunal is not persuaded that these adjustments were disruptive to domestic pricing, as claimed by the industry.<sup>37</sup> Columbia brought its price structure into conformity with the actual retail prices that the market had already established, in prior years, for the relevant Sorel styles produced by Kaufman. This means that the industry would have had to compete in relation to these actual retail prices before Columbia ever entered the picture.

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31. *Supra* note 30 at paras. 39-40.

32. *Supra* note 30 at paras. 40-41.

33. Importer's Exhibit C-04 (protected), paras. 42-45 at 11-12, Administrative Record, Vol. 14.

34. *Transcript of Public Hearing*, Vol. 2, 10 December 2002, at 269-70 and Vol. 3, 11 December 2002, at 276, 339-40.

35. *Transcript of In Camera Hearing*, Vol. 3, 11 December 2002, at 286.

36. *Supra* note 30 at para. 15.

37. In the Tribunal's review of the dumping margins, it found no evidence of a correlation between the margins of dumping and the selling prices of Sorel branded product in the domestic market.



In the Tribunal's opinion, there is another factor that makes it problematic to compare Kaufman's 2000 prices with Columbia's 2001 prices. Although Kaufman declared bankruptcy in July 2000, it is clear from the evidence that this was preceded by a number of major financial and other difficulties that had played out for a number of years prior to the actual bankruptcy.<sup>38</sup> Accordingly, the reliability of Kaufman's pricing strategy in 2000 is open to question.

However, regardless of how realistic Kaufman's Sorel prices were or why Columbia decided to lower certain of those prices, there is the question of how closely related the prices of Sorel waterproof footwear are to prices of domestic brands. On this point, the Tribunal finds the testimony of the retailer witnesses, whose combined sales of waterproof footwear, including Sorel and domestic brands, comprise a substantial proportion of the Canadian market, to be clear, consistent and compelling. The witnesses testified that Sorel was a premium brand that was generally a best-in-class line of winter waterproof footwear.<sup>39</sup> They also maintained that, when buying Sorel products for their stores, the Sorel name and its reputation for quality and reliability were more important considerations than price.<sup>40</sup> In this regard, one of the witnesses testified that, on a scale of 1 (least important) to 10 (most important), the pricing of Sorel products rated only 5 in terms of its importance to the purchase decisions made in that retailer's stores.<sup>41</sup>

Further, the retailer witnesses, each of whose stores carried both the Sorel brand and various domestic brands of waterproof footwear, affirmed that the price that they paid for Sorel products had no effect on the price that they paid for domestic brands.<sup>42</sup> In elaborating on this point, one witness testified that, in considering and comparing Sorel prices, the retailer was more concerned with the pricing of Sorel products by its major competitor than with the pricing of domestic brands within its own stores.<sup>43</sup> In the witness's view, the price of a Sorel product could be reduced without necessarily affecting the price of domestic brands.<sup>44</sup>

In sum, in the Tribunal's estimation, the testimony of these witnesses was unanimous that there was not a close relationship between Sorel prices and the prices of domestic brands. The weakness of this link is also evident in the data on prices collected by the Tribunal's staff in the course of the inquiry. More particularly, at the most aggregated level, the data show that average domestic prices for rubber waterproof footwear rose in each year of the period reviewed. The average price of imports of the subject goods from Macao and Vietnam also rose from 2001 through the first half of 2002, but it was about twice as high as average domestic prices.<sup>45</sup> At a more disaggregated level, the Tribunal compared prices for similar categories of winter waterproof footwear, such as children's rubber or TPR bottom boots with fabric uppers, a high volume category for both the domestic industry and Columbia. In all the categories examined, the cumulated average sales values for imports of the subject goods are above corresponding average domestic

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38. *Supra* note 17 at paras. 12-16.

39. Importer's Exhibit C-09, para. 10, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 10 December 2002, at 268 and Vol. 3, 11 December 2002, at 367.

40. Importer's Exhibits C-09, para. 11-13, Administrative Record, Vol. 13 and C-07, para. 14, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 11 December 2002, at 318.

41. *Supra* note 35 at 310.

42. *Transcript of Public Hearing*, Vol. 2, 10 December 2002, at 265 and Vol. 3, 11 December 2002, at 283-84, 307-08, 351; *Supra* note 35 at 327.

43. *Transcript of Public Hearing*, Vol. 3, 11 December 2002, at 375-76; *Supra* note 35 at 301-02.

44. *Transcript of Public Hearing*, Vol. 3, 11 December 2002, at 374.

45. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-002-07A (protected), Administrative Record, Vol. 2.1 at 156.

values. As well, cumulated average import values are increasing, while average domestic values are declining somewhat.<sup>46</sup>

At the most specific and disaggregated level, the Tribunal's staff conducted the survey, cited earlier, of the prices of various styles of Sorel and domestic brands of waterproof footwear. This survey requested Columbia and the domestic producers to identify their top selling competing styles and to provide the volume and value of sales for each one. The survey shows that Columbia's average unit prices rose consistently, from 2001 to 2002, for all Sorel styles that were reported. These results are consistent with evidence submitted by Columbia that its wholesale prices either increased or remained stable in 2002 for all but one of its styles, which accounted for only 64 pairs.<sup>47</sup> In contrast, the prices of some competing domestic brands rose, while others fell over the same two-year period. In addition, over the three-year period starting in 2000, the study shows that the prices of some competing domestic styles rose each year, some fell each year, and others showed no consistent pattern of rising or falling.

Furthermore, according to the survey, in some cases, the Sorel style is the most expensive product among the competing styles, while, in other cases, a domestic style is the highest-priced item. Moreover, the absolute difference in price between a particular Sorel style and corresponding domestic styles is, in some cases, quite large. Indeed, in general, the overall range of prices between the highest-priced item and the lowest-priced item, among the competing styles, is quite substantial. This suggests to the Tribunal that, even with so-called "competing styles", the different prices between the various Sorel styles and the domestic styles reflect substantial product differentiation. In sum, on the basis of the evidence, the Tribunal can find no apparent correlation between Sorel prices and domestic prices nor can it conclude that the subject goods that are imported from Macao and Vietnam, have undercut, depressed or even suppressed the pricing of like goods by the domestic industry.

### **Impact on the Industry**

The Tribunal's view that the volumes and prices of the subject goods from Macao and Vietnam have not injured the domestic industry is reinforced when the performance of the domestic industry is examined. In this connection, the evidence shows that the industry's production of like goods rose steadily in each full year of the period reviewed and was some 20 percent higher in 2001 than it was in 1999. Its share of the domestic market was up by 6 percentage points, sales volumes by some 10 percent, and sales values by about 15 percent, over the same three-year period. The volume and value of the industry's exports were both higher by almost 30 percent in 2001 compared to 1999.

Further, the industry's combined financial statement shows that its average unit value of net domestic sales has risen each year since 1999. In terms of its domestic business, the industry operated at reasonable levels of profitability in 2000 and 2001 compared to 1999, when it operated at a loss.<sup>48</sup> Interim<sup>49</sup> results for 2001 and 2002 suggest continued profitability for 2002. Export sales were also profitable

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46. *Ibid.* at 157-58.

47. *Supra* note 30 at para. 32. As already discussed, Columbia did not sell the Sorel brand in Canada until 2001.

48. *Public Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-002-06, Administrative Record, Vol. 1.1 at 66. The industry's performance would have been even better had it not been for other factors unrelated to dumping. *Transcript of In Camera Hearing*, Vol. 1, 9 December 2002, at 65-68.

49. January to June 2001 and 2002.

throughout the period. Employment, hours worked, capacity utilization and investments were all higher in 2001 than they were in 1999.<sup>50</sup>

In short, virtually all the industry's key performance indicators showed improvements in 2000 and 2001 and, in some cases, the improvements were substantial. Moreover, this strong performance was achieved despite what several industry and retailer witnesses described as relatively poor selling seasons in 2000 and again in 2001 because of the late and mild winter conditions that prevailed.<sup>51</sup> This evidence suggests to the Tribunal that the industry has, in fact, been a net beneficiary of Kaufman's demise in 2000. Indeed, the aggregate market data indicate that the industry captured a certain portion of the market that became available with Kaufman's disappearance in 2000. Although the industry appears to have given back some of its gains following the re-introduction of the Sorel brand under Columbia in 2001, the industry continues to hold a substantial proportion of the market share that it initially captured.

In the Tribunal's opinion, the fact that the industry has been able to retain some of Kaufman's former market share is, in some measure, related to Columbia's decision to sell fewer Sorel styles to fewer customers within a narrower and more focused premium brand marketing strategy than that of Kaufman.

The Tribunal notes that, in support of their case, three of the six domestic producers have made injury allegations at specific accounts. The Tribunal has examined the evidence pertaining to these allegations and does not find it to be persuasive. In one case, the evidence indicates that an alleged lost sale was the result of competition between two domestic producers, not with Columbia.<sup>52</sup> In another case, the evidence indicates that some repeat business was not given to a domestic producer because of certain quality concerns.<sup>53</sup>

One of SMAC's principal allegations of lost sales concerned Columbia's decision to have Sorel boots manufactured in Macao and Vietnam rather than by Rallye, which produced them for Sears in 2000. The Tribunal notes that Rallye produced the Sorel boots for Sears, in 2000, under an agreement with the receiver in bankruptcy that held the rights to the trademark at the time. Once the trademark was sold to Columbia, Columbia was under no obligation to continue the arrangement with Rallye, and its decision to have the Sorel boots manufactured in Macao and Vietnam was made for its own corporate reasons. Under the circumstances, the Tribunal does not see this as a lost sale, since Rallye had no right to produce the goods.

More generally, many of the allegations lack relevant details about competing Sorel products and prices. Others appear erroneous, as they allege injury at accounts to which Columbia does not sell waterproof footwear.<sup>54</sup> In other cases, they refer to lost sales at accounts where the industry had never sold its products.<sup>55</sup>

The Tribunal notes that, as further evidence of the injury that the industry was experiencing, SMAC has alluded to the fact that some domestic producers are importing uppers to reduce their costs of production and that, in one case, a producer has begun importing some waterproof footwear in lieu of producing it

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50. *Public Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-002-06, Administrative Record, Vol. 1.1 at 69, 71-72.

51. *Transcript of Public Hearing*, Vol. 1, 9 December 2002, at 17-19, 49-50; Manufacturer's Exhibit A-8 (protected), para. 15, Administrative Record, Vol. 12.

52. Manufacturer's Exhibit A-8 (protected), para. 10-12, Administrative Record, Vol. 12.

53. *Transcript of In Camera Hearing*, Vol. 2, 10 December 2002, at 244-45.

54. *Supra* note 33 at para. 41; *Transcript of In Camera Hearing*, Vol. 1, 9 December 2002, at 34-36.

55. *Supra* note 33 at para. 42; *Transcript of In Camera Hearing*, Vol. 1, 9 December 2002, at 49-50.

domestically. According to SMAC, domestic producers have also been injured by reason of the fact that they have had to add more features to their products to compete with the Sorel brand. In the Tribunal's estimation, none of these developments are proof of injury. In the Tribunal's view, the industry's decision to import finished footwear or certain components is consistent with a rationalization and more efficient use of its factors of production that renders it more competitive and more immune to injury. As for the "bells and whistles" that domestic producers may have had to add to their brands to compete with premium-priced Sorel products, this, in the Tribunal's opinion, is a reflection of the strength of the Sorel brand.

In sum, the Tribunal concludes from the evidence provided that the industry, as a whole, was not injured by the subject goods over the period reviewed.

### **Threat of Injury**

As already noted, the Tribunal finds that Columbia has taken a measured and responsible approach to re-introducing the Sorel brand in Canada. The evidence presented in this case suggests that this will continue in the future. In this regard, the Tribunal notes that Columbia's marketing plans for 2003 call for modest growth in its sales of winter waterproof footwear and a very small increase in its Canadian market share.<sup>56</sup> According to Columbia, it will continue to focus on a premium pricing strategy for the Sorel brand and seek to leverage the strength of the brand name to secure the highest prices for Sorel products.<sup>57</sup> The evidence also shows that Columbia has a small sales force in Canada, one distribution centre in Ontario and no plans to add any other distribution centres in the near future.<sup>58</sup> The Tribunal has no reason to doubt Columbia's evidence on any of these matters.

The Tribunal also notes that all the retailer witnesses gave evidence that it was important for them to offer their customers both domestic brands of waterproof footwear and the Sorel brand.<sup>59</sup> To this end, all of them had done significant business with the domestic industry in the past, and they continued to do so. They stated that their purchases of imported Sorel products had not caused them to reduce their purchases of the remaining domestic brands.<sup>60</sup> Two of these witnesses, representing major retail chains, indicated that, if the industry were willing, their stores would like to do even more business on brand-name products with the domestic industry in the future. One of these witnesses, representing a large retail chain, foresaw a growing proportion of the company's future sales coming from domestic sources, in any event.<sup>61</sup> There is nothing in the evidence of these witnesses to suggest a threat to domestic production from the subject goods, in the Tribunal's opinion.

Further, evidence submitted by the industry itself does not suggest a bleak outlook.<sup>62</sup> On the contrary, a number of the witnesses from the domestic industry forecast reasonable growth in either or both of their domestic and export sales in the coming years.<sup>63</sup> One witness indicated that his company was optimistic about the prospects of its ongoing move into new, higher-value product lines, such as industrial

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56. *Supra* note 33 at para. 44.

57. *Supra* note 30 at para. 16.

58. Importer's Exhibit C-01, paras. 54-55, Administrative Record, Vol. 13.

59. *Supra* note 44 at 318, 326, 336-338; Importer's Exhibit C-07, paras. 9, 20, Administrative Record, Vol. 13.

60. *Transcript of Public Hearing*, Vol. 2, 10 December 2002, at 265 and Vol. 3, 11 December 2002, at 284-85, 337-38; *Supra* note 35 at 327-28.

61. *Supra* note 44 at 304.

62. Manufacturer's Exhibit A-3, paras. 5-6, Administrative Record, Vol. 11.

63. Manufacturer's Exhibits A-6 (protected), para. 7 and A-8 (protected), paras. 10-14, Administrative Record, Vol. 12; Manufacturer's Exhibits A-3, para. 8 and A-9, paras. 4, 7-8, Administrative Record, Vol. 11.

and safety boots.<sup>64</sup> Moreover, as noted earlier, the evidence shows that the domestic industry, generally, is following a strategy of cost reduction that is making it increasingly competitive, both domestically and in the United States.<sup>65</sup> In fact, one domestic producer apparently can produce certain winter waterproof footwear at a lower cost than the landed cost of importing the same goods from Vietnam.<sup>66</sup>

The Tribunal also takes note of the testimony of the Vietnamese officials who appeared at the hearing on behalf of the Vietnamese footwear industry. They asserted, among other things, that most Vietnamese production capacity is devoted to the production of non-subject footwear destined for the European Union. In this context, they asserted that Vietnamese production capacity for the subject goods was limited and production was based only on orders by customers.<sup>67</sup> Here, again, there is nothing that suggests a pending onslaught on the Canadian market by exporters of the subject goods, in the Tribunal's estimation.

The Tribunal notes that SMAC has argued that there is a threat not only from Columbia but also from all "others" for whom Columbia has "blazed the trail". The Tribunal has not seen any evidence that supports this proposition. On the contrary, the Tribunal notes that its staff conducted an extensive survey of imports of the subject goods from Macao and Vietnam<sup>68</sup> that were listed under the broad codes of the *Harmonized Commodity Description and Coding System* that are relevant to this case, to determine which importers were, in fact, importing the subject goods. In addition to Columbia, only one other importer of any significance was identified, namely, Mark's Work Wearhouse, which imported some subject footwear from Vietnam under its own private label. The Tribunal's questionnaires that were completed and returned by foreign producers also identify Columbia (or its agents) and Mark's Work Wearhouse as their only Canadian customers.<sup>69</sup> Thus, as far as the past and present are concerned, the "cast" of importers is limited. What "others" may do in the future is simply a matter of conjecture or speculation by SMAC that cannot form the basis of a finding of threat of injury, in the Tribunal's view.

Finally, SMAC argued that the Tribunal's finding of threat of injury in Inquiry No. NQ-2000-004 involving waterproof footwear from China is relevant to this case.<sup>70</sup> The Tribunal is of the view, however, that there is a significant difference in the threat posed by imports of winter waterproof footwear from China, the largest footwear manufacturer in the world, compared to imports of winter waterproof footwear from Macao and Vietnam.<sup>71</sup> As noted above, winter waterproof footwear is only made in Vietnam on the basis of specific orders. Moreover, the production of other seasonal waterproof footwear, such as red-soled rubber boots, duckies and clogs, has not shifted from China to Vietnam or Macao to escape the effects of the finding cited by SMAC or other injury findings on waterproof footwear from China.<sup>72</sup> There also appear to be no ownership ties between Chinese producers and the principal Vietnamese manufacturers that export to

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64. *Supra* note 62 at para. 5.

65. This includes importing uppers from offshore sources. Tribunal Exhibit NQ-2002-002-RI-01B, paras. 19, 30, 39-40, 52, Administrative Record, Vol. 10. In one case, it also includes offering a product range that is partially sourced. Manufacturer's Exhibit A-4 (protected), para.15, Administrative Record, Vol. 12.

66. *Supra* note 33 at para. 28.

67. *Supra* note 44 at 388-89.

68. In its survey of importers, the Tribunal found, as noted above, that imports from Hong Kong were negligible.

69. Tribunal Exhibit NQ-2002-002-22.01 (protected), para. 15, Administrative Record, Vol. 6.2; Tribunal Exhibit NQ-2002-002-22.02 (protected), para. 15, Administrative Record, Vol. 6.2; Tribunal Exhibit NQ-2002-002-22.04 (protected), para 15, Administrative Record, Vol. 6.2.

70. *Supra* note 13 at paras. 39-40.

71. *Supra* note 50 at 105-06.

72. *Certain Waterproof Rubber Footwear* (18 October 2002), RR-2001-005 (CITT).

Canada.<sup>73</sup> Accordingly, the Tribunal does not consider the findings against China on waterproof footwear to be relevant to this case.

## CONCLUSION

The Tribunal hereby terminates its inquiry with respect to Hong Kong, China, as it has determined, pursuant to subsection 42(4.1) of SIMA, that the volume of dumped goods from Hong Kong, China, was negligible, as the volume of those goods was less than 3 percent of the total volume of the goods that were released into Canada and that were of the same description as the dumped goods.

For the foregoing reasons, the Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping of the subject goods originating in or exported from Macao, China; and Vietnam has not caused material injury and is not threatening to cause material injury to the domestic industry.

As regards the domestic industry's complaint of massive dumping, the Tribunal notes that a finding of injury is a condition precedent to a finding of "massive importation". Accordingly, it follows that there is no basis for a finding of massive importation in this case.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Pierre Gosselin  
Pierre Gosselin  
Member

Richard Lafontaine  
Richard Lafontaine  
Member

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73. *Supra* note 44 at 389-91.