CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, May 3, 1990

Inquiry No.: NQ-89-003

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

WOMEN'S LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN; WOMEN'S LEATHER BOOTS ORIGINATING IN OR EXPORTED FROM POLAND, ROMANIA AND YUGOSLAVIA; AND WOMEN'S NON-LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN

F I N D I N G S

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry consequent upon the issue by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping and subsidizing dated January 3, 1990, and of a final determination of dumping and subsidizing dated April 3, 1990, respecting the dumping in Canada of women's leather boots and shoes originating in or exported from Brazil, the People's Republic of China and Taiwan; women's leather boots originating in or exported from Poland, Romania and Yugoslavia; and women's non-leather boots and shoes originating in or exported from the People's Republic of China and Taiwan; and respecting the subsidizing of women's leather boots and shoes originating in or exported from Brazil. (Sandals, slippers, sports footwear, waterproof rubber footwear, waterproof plastic footwear, safety footwear incorporating protective metal toe caps, orthopedic footwear, wooden shoes, disposable footwear, bowling shoes, curling shoes, moto-cross racing boots and canvas footwear are not included in the product definition).

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Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds:

(1) that the dumping in Canada of women's leather boots originating in or exported from Brazil, Poland, Romania and Yugoslavia and of women's leather and non-leather boots originating or exported from the People's Republic of China and Taiwan, and the subsidizing of women's leather boots from Brazil have caused, are causing and are likely to cause material injury to the production in Canada of like goods; and

(2) that the dumping in Canada of women's leather shoes originating in or exported from Brazil and of women's leather and non-leather shoes originating in or exported from the People's Republic of China and Taiwan, and the subsidizing of women's leather shoes from Brazil have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

The aforementioned findings do not include sandals, slippers, sports footwear, waterproof rubber footwear, waterproof plastic footwear, safety footwear incorporating protective metal toe caps, orthopedic footwear, wooden shoes, disposable footwear, bowling shoes, curling shoes, moto-cross racing boots and canvas footwear.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

The Statement of Reasons will be issued within 15 days.

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, May 18, 1990

Inquiry No.: NQ-89-003

WOMEN'S LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN; WOMEN'S LEATHER BOOTS ORIGINATING IN OR EXPORTED FROM POLAND, ROMANIA AND YUGOSLAVIA; AND WOMEN'S NON-LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN

Special Import Measures Act - Women's leather and non-leather boots and shoes - Whether the dumping of women's leather boots and shoes from Brazil, the People's Republic of China and Taiwan; women's leather boots from Poland, Romania and Yugoslavia; and women's non-leather boots and shoes from the People's Republic of China and Taiwan; and the subsidizing of women's leather boots and shoes from Brazil have caused, are causing or are likely to cause material injury to the production in Canada of like goods - section 2 of the *Special Import Measures Act* - like goods - class of goods - whether women's boots and shoes are like goods - whether women's leather and non-leather boots and shoes are like goods - uses and characteristics of women's boots and shoes - uses and characteristics of women's leather and non-leather boots and shoes - whether women's boots and shoes are one or more classes of goods - whether complainant has standing to represent industry as a whole - whether statistical data presented in pre-hearing staff report represent authentic or reliable data - whether material injury in the form of declines in employment, production, sales, market share, capacity utilization, productivity, gross margins and profitability.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping and subsidizing in Canada of the aforementioned goods have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 2 to April 6 April 9 to April 12 and April 17, 1990
Date of Findings:	May 3, 1990
Tribunal Members:	Robert J. Bertrand, Q.C., Presiding Member Kathleen E. Macmillan, Member Sidney A. Fraleigh, Member

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Participants:		G.P. MacPherson and
		Suzette Cousineau
	for	The Shoe Manufacturers'
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		(Complainant)
		Glenn A. Cranker
		Donald Kubesh
		Martine M.N. Band
		Mathieu T. Krepec and
		William B. Rosenberg
	for	Canadian Importers Association
		The People's Republic of China
		M & M Trading Inc. and
		Skorimpex Foreign Trading
		Company Ltd.
		Peter Clark
		Chris Hines and
		Mary Ellen Murdock
	for	Ministry of Finance
		Government of Brazil and
		ADICAL
		Kevin Sherkin
	for	Shoe Sales Canada
		Darrell H. Pearson and
		Brenda Swick-Martin
	for	The Canadian Shoe Retailers'
		Association and
		Retail Council of Canada
		(Importers/Exporters)

Witnesses:

Nathan Finkelstein
President
The Shoe Manufacturers' Association of Canada

Jean Marc Bruneau
Chairman of the Board
The Shoe Manufacturers' Association of Canada

Steven Moranis
Secretary - Treasurer
Francine Footwear Limited

Ruben Moranis
President
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Gerald H. Taylor
President
Brown Shoe Company of Canada Ltd.

Rod P. Stafford
Senior Vice President Marketing
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Gerald Feifer
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Al Mandel
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Jim Perivolaris
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Rosita Shoe Company (Canada) Ltd.

Claude Beaulieu
General Manager
Chaussures Faber Shoes Inc.

Serge Brie
General Manager
Alfred Cloutier

Laurie Weston
President
VWV Enterprises

Cursio José Juchem
Socio Gerente
Calçados Vogue Ltda.

Adimar Schievelbein
Schievelbein Associados
(was sworn in as an interpreter for Mr. Juchem)

David Miller
President
Howmark of Canada

Ernest Avrith
Chairman of the Board
Le Groupe Yellow

Douglas Avrith
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Adel Tabet
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Manager, Canadian Export Div.
Skorimpex Foreign Trading Company Ltd.

Maxwell Ho
President
Maxwell Ho Group

Clement Plourde
Vice President
M & M Trading Inc.

W.B. Gladstone
President
Gladstone Shoe Agencies Ltd.

Cedric Morrice
General Manager
9 West Canada

Brian J. Worts
Executive Vice-President
Kinney Canada Inc.

James R. Hill
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K Mart Canada Ltd.

Sharon Maloney
President
Canadian Shoe Retailers' Association

David McIlveen
President
Winsbys Limited

Robert Czarnik
President
Stan The Shoe Man

Inger Sparring-Barraclough
Chief
Fancy That Boutique

Robert L. Holland
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A. Klowak
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Cheryl Grant
Buyer
Sears Canada Inc.

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Director of Marketing
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TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, Member

STATEMENT OF REASONS

SUMMARY

In this inquiry, the Canadian International Trade Tribunal had to determine whether the dumping of women's leather boots and shoes from Brazil, the People's Republic of China and Taiwan; women's leather boots from Poland, Romania and Yugoslavia; and women's non-leather boots and shoes from the People's Republic of China and Taiwan; and the subsidizing of women's leather boots and shoes from Brazil had caused, were causing and were likely to cause material injury to the production in Canada of like goods. In its investigation, Revenue Canada found that, between January 1, 1989, and August 31, 1989, the margins of dumping ranged from 20 percent to 47 percent of normal value. The weighted average amount of subsidy for Brazilian leather boots and shoes was 3.5 percent for the same period.

In reaching its decision in this case, the Tribunal concluded that there were two classes of like goods, namely, women's leather and non-leather boots and women's leather and non-leather shoes. Therefore, it considered separately whether imports of dumped and subsidized goods were responsible for past, present and future material injury to the domestic production of boots and, then, of shoes.

The complainant, the Shoe Manufacturers' Association of Canada (SMAC), claimed material injury in the form of lost market share, lost employment, lost production, plant closings, capacity underutilization, price suppression and declines in profitability.

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The evidence showed that, from 1986 to 1989, sales of domestically produced boots and shoes declined by 1.5 million pairs and 5 million pairs, respectively. This represented employment losses of 11 percent in the boot industry and 40 percent in the shoe industry. Gross and net margins and capacity utilization also declined in both industries.

In the Tribunal's view, the evidence clearly revealed the severity and extent of the injury suffered by both the domestic boot and shoe industries and, accordingly, the Tribunal considers that the past and present injury was material.

The Tribunal sees a clear causal link between imports of the dumped and subsidized footwear and the various forms of material injury suffered by these two domestic industries from 1986 to 1989. Although several other important factors affected conditions in the footwear market during this period, including the phasing out of quotas and changing consumer preferences for athletic and so-called ath-leisure footwear, their impacts were secondary to the effects of the dumping and subsidizing found by Revenue Canada. Similarly, the Tribunal is of the view that the material injury suffered by the Canadian producers was not caused primarily by low-cost imports. The Tribunal accepts that the subject countries, as well as some non-subject countries, may have a comparative cost advantage over Canadian producers and the major reason for the large market gains by the subject countries was the significant margins of dumping and subsidizing.

The Tribunal also considers that there is a likelihood of material injury from dumped and subsidized imports as there is no indication that imports from the subject countries will decline.

BACKGROUND

The Tribunal, under the provisions of section 42 of the *Special Import Measures Act* (SIMA), conducted an inquiry following the issue by the Deputy Minister of National Revenue for Customs and Excise (Deputy Minister) of a preliminary determination of dumping and subsidizing dated January 3, 1990, and of a final determination of dumping and subsidizing dated April 3, 1990, respecting the dumping in Canada of women's leather boots and shoes originating in or exported from Brazil, the People's Republic of China and Taiwan; women's leather boots originating in or exported from Poland, Romania and Yugoslavia; and women's non-leather boots and shoes originating in or exported from the People's Republic of China and Taiwan; and respecting the subsidizing of women's leather boots and shoes originating in or exported from Brazil. (Sandals, slippers, sports footwear, waterproof rubber footwear, waterproof plastic footwear, safety footwear incorporating protective metal toe caps, orthopedic footwear, wooden shoes, disposable footwear, bowling shoes, curling shoes, moto-cross racing boots and canvas footwear are not included in the product definition).

The notices of preliminary and final determinations of dumping and subsidizing were published in Part I of the Canada Gazette of February 3, 1990, and April 21, 1990, respectively. The Tribunal's Notice of Commencement of Inquiry issued on January 9, 1990, was published in Part I of the Canada Gazette of January 20, 1990.

As part of the inquiry, the Tribunal sent detailed questionnaires to the Canadian manufacturers and selected importers of the subject goods requesting production, financial and market information, as well as other information, covering the period January 1, 1986, to December 31, 1989. From the replies to questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering that period, which was the period of review in this inquiry. The Deputy Minister's investigation into dumping covered imports of the subject goods between January 1, 1989, and August 31, 1989, while the subsidy investigation covered the period January 1, 1988, to August 31, 1989.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by the parties at the hearing, as well as the transcript of all proceedings. All public exhibits were made available to the parties and protected exhibits were made available to independent counsel only.

Public and *in camera* hearings were held in Ottawa starting on April 2, 1990. The participants, the Shoe Manufacturers' Association of Canada, the complainant, the Canadian Importers Association, the People's Republic of China, M & M Trading Inc., Skorimpex Foreign Trading Company Ltd., the Ministry of Finance - Government of Brazil, Associaçao Das Industrias De Calcados Do Rio Grande Do Sul (ADICAL), Shoe Sales Canada, the Canadian Shoe Retailers' Association and the Retail Council of Canada, were represented by counsel at the hearing. In addition, counsel for the Shoe Manufacturers' Association of Canada called witnesses from Francine Footwear Limited, Brown Shoe Company of Canada Ltd., Grand Footwear Inc., Mandel Footwear Limited, Tender Tootsies Limited, Rosita Shoe Company (Canada) Ltd., Chaussures Faber Shoes Inc. and Alfred Cloutier. Counsel for the Canadian Importers Association called witnesses from VWV Enterprises, Howmark of Canada, Le Groupe Yellow, Maxwell Ho Group, Gladstone Shoe Agencies Ltd., 9 West Canada and Kinney Canada Inc. Counsel for the Canadian Shoe Retailers' Association and the Retail Council of Canada called witnesses from Winsbys Limited, Stan The Shoe Man, Fancy That Boutique, Maher Inc., Sears Canada Inc., Sterling Shoes Inc., Agnew Group Inc. and The Bay - Simpsons.

A finding was issued by the Tribunal on May 3, 1990. The following are the reasons for that finding.

THE PRODUCT

The product which was the subject of the inquiry was described in the preliminary determination of dumping and subsidizing as women's shoes and boots with uppers made of leather and non-leather materials and manufactured in sizes 4 and up (European equivalent: 34 and up). Leather footwear was defined for purposes of the inquiry as footwear which had leather as the main component of the upper. Additional pieces such as tongues, scuff pads, toe caps, counters, logos, decorations, trims, heels, etc., were not considered to be part of the main component. Non-leather footwear had uppers which were made from materials such as satin, polyurethane, vinyl coated fabrics, etc.

Specifically excluded from the class of goods under inquiry were sandals, slippers, sports footwear, waterproof rubber footwear, waterproof plastic footwear, safety footwear incorporating protective metal toe caps, orthopedic footwear, wooden shoes and canvas footwear.

For further clarification, sandals were generally defined as an open shank footwear employing narrow ribbons, straps or thongs to form the upper and attachment, in which the difference between the combined height of the sole and any heel in the heel area, and the height of the sole in the forward area, did not exceed two centimetres.

Slippers were generally defined as footwear with a very soft upper in which the foot could be easily placed, which had no lace, buckle, velcro or other fastener to hold the footwear on the foot. A slipper had a thin (no more than 5 mm) flexible sole and was designed for wearing indoors.

Sports footwear was generally defined as footwear which was designed for a sporting activity and had, or had provision for, the attachment of spikes, sprigs, stops, clips, bars or the like. It also included skating boots, ski boots, cross-country ski footwear, wrestling boots, boxing boots, cycling boots, bowling shoes, curling shoes and moto-cross racing boots. For purposes of this inquiry, sports footwear also referred to tennis shoes, jogging shoes and running shoes.

Waterproof rubber footwear and waterproof plastic footwear were defined as footwear with outer soles and uppers made of rubber or plastic, the uppers of which were neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes. The term "outer sole" meant that part of the footwear (other than an attached heel) which, when in use, was in contact with the ground. The "upper" was the part of the shoe or boot above the sole. Where a single piece of material was used to form the sole and either the whole or part of the upper, the upper was generally defined as that portion of the shoe which covered the sides and top of the foot. For further clarity, plastic or rubber footwear with tops assembled by stitching was excluded from the inquiry if the upper was moulded to a height in the near vicinity of the ankle and was free of stitching or fastenings below that level. For example, footwear commonly known as "duck boots" or "bean boots" were not subject to this inquiry.

Orthopedic footwear was defined as footwear designed for corrective or compensatory purposes and sold under medical prescription.

Also, for purposes of this inquiry, canvas was defined as a fabric made of cotton or other vegetable fibre and did not extend to synthetic textile materials.

Besides the above-mentioned exclusions, the class of goods under inquiry <u>did not include</u> unassembled footwear, overshoes worn over other footwear and disposable footwear which was generally designed to be used only once.

The organization of a shoe factory varies with the type and quality of footwear produced and with the size of the factory, but there is, nevertheless, a similarity between most plants. A plant is usually divided into several distinct departments.

The manufacturing process begins in the pattern department where patterns are cut for a certain style. From the different patterns, dies are made for the cutting department. The cutting department cuts components from leather skins or other material, as well as the lining, using cutting dies and a cutting machine. The components and pieces of lining are then bundled in multiples, usually of 18, 24 or 36 pairs, before being sent to the fitting department. In the fitting department, all these different parts are stitched and assembled. This department is also responsible for many other tasks such as perforating, pinking, skiving, splitting, doubling, seam rubbing and taping, cementing and folding, eyeletting, lacing, etc. Meanwhile, the outsoles, insoles, counters, box toes and other various bottom stock items are assembled and tied into bundles in the stock fitting department. In the lasting department, the insole is attached to the bottom of a plastic form known as a "last." The shoe or upper is pulled over the last by various types of machines, which secure the upper to the insole. The lasted upper is then roughed and cemented with a nitrocellulose cement, to which the sole is pressed. In the finishing department, the shoe is cleaned, touched up and sprayed. After final inspection, the finished footwear is packed for shipping.

There are several other methods of constructing a shoe, such as "welted," stitchdown, vulcanization and injection moulding, but the cemented method is the most widely used as it is a relatively inexpensive process. The result is a shoe that is both very light and flexible.

THE DOMESTIC INDUSTRY

The complainant, the Shoe Manufacturers' Association of Canada (SMAC), stated that its members accounted collectively for more than 75 percent of all Canadian production of the subject women's footwear.

The production of the subject footwear is essentially limited to the provinces of Quebec and Ontario, which account for 99 percent of the production volumes and 90 percent of the manufacturing firms.

The number of firms active during the review period remained relatively constant at approximately 67 to 69 between 1986 and 1988, but decreased to 62 firms in early 1989. By the end of 1989, however, only 52 firms were still producing the subject footwear, as 10 more firms had ceased production during that year. Overall, during the review period, 23 firms ceased manufacturing the subject goods while 6 started production, for a net loss of 17 firms. As a result of plant closings and a general reduction in production by existing firms, total production for the subject footwear declined by 40 percent between 1986 and 1989, while employment declined by 30 percent.

Plants vary in size and technology used. Most firms tend to specialize in the production of a limited range of footwear such as expensive, medium- or low-priced shoes or boots. While degree of specialization varies from firm to firm, most manufacturers tend to concentrate on one product category, with 80 to 90 percent of their output being either boots or shoes. Even with this specialization, a range of styles, fittings, colors and sizes is usually made at each factory, and for many, the range of styles is continuously changing as fashion in footwear evolves.

In recent years, the footwear industry has experienced a number of significant technological changes. Some of these changes, which were more evolutionary in nature, continued to contribute to the reduction of time and labor consumed in the conventional shoe-making process. Other changes, which were more revolutionary, applied completely new concepts of mass production to the manufacture of footwear. The degree of modernization varies from company to company.

There are areas where the automation of equipment is necessarily limited. In the cutting department, for example, each hide, being unique, must be cut in such a way as to minimize losses. Because each hide is different, the pattern cutting options vary for each one, preventing standardization of cuts and, thereby, restricting the adoption of automated equipment.

The stylists of Western Europe, especially those in France and Italy, create the dominant style trends for women's footwear. Also, US subsidiaries in Canada have full access to the styling departments of their parent companies, while many firms employ their own in-house designers or stylists.

IMPORTERS AND EXPORTERS

Importers of footwear into Canada can be classified into three broad categories: importer-wholesalers, retailers and manufacturers.

Importer-wholesalers are those firms which import, warehouse and sell footwear directly to retailers. Most of the goods are purchased and imported against specific orders from a retail establishment. The retailers which import footwear directly from foreign countries range from the major department and chain stores to smaller independent retailers. A number of footwear manufacturers have also entered the import field in a small way in order to provide their customers with a more complete line of footwear.

During the period of imposition of the global quota (beginning in 1977) and more specifically during the period of the last quota regime, that is, from December 1, 1985, to November 30, 1988, the share of imports held by importer-wholesalers was protected by the fact that import permits were mainly distributed on the basis of past performance. However, during the last quota regime, quotas were liberalized, and, with their eventual termination in November 1988, there were no more protected shares, and retailers were more at liberty to deal directly with foreign producers, thus increasing their volume of direct imports.

The subject exporting countries accounted for approximately 70 percent of total imports of women's leather and non-leather boots and shoes. During the period under review, total imports of the subject footwear increased by 23 percent while the subject imports from the subject sources increased by 33 percent.

With regard to imports of boots, the subject countries accounted for more than 60 percent of total boot imports. Poland, Brazil and Taiwan are the major sources, representing 50 percent of total imports.

With respect to imports of shoes, subject countries, Taiwan, Brazil and China, represented approximately 70 percent of total shoe imports during the period under review.

THE COMPLAINT

SMAC claimed that imports of the dumped and subsidized footwear had caused, were causing and were likely to cause material injury to the domestic production of like goods.

Counsel asserted that SMAC represented manufacturers which accounted for more than 75 percent of total Canadian production and, therefore, had standing to lodge a complaint or to represent the interests of the domestic footwear industry. Counsel also stated that the witnesses who appeared to give evidence in support of SMAC's position represented more than 40 percent of total domestic production of the subject footwear.

Citing the definition of like goods contained in the *Special Import Measures Act* and referring to the *Sarco Canada Limited v. Anti-dumping Tribunal*[1] and *Noury Chemical Corporation et al. v. Penwalt of Canada Ltd.*,[2] counsel argued that the inquiry involved one product class. Few consumers, it was claimed, could distinguish between leather and non-leather footwear. As well, in terms of characteristics and uses, they argued that there was a high degree of substitutability between boots and shoes.

Counsel submitted that domestic manufacturers had suffered material injury in terms of lost sales and market share, lost employment, as well as declines in gross and net margins and capacity utilization and plant closings. Counsel also submitted that the materiality of the injury could not be doubted. They argued that the causality of the injury was clear because it had been the subject countries, and no others, which had been displacing domestic production and suppressing domestic prices.

Counsel alleged that the likelihood of injury was reflected in the reduced level of orders which domestic manufacturers had received for the 1990 selling season.

Counsel stated that the weighted average margins of dumping found by the Deputy Minister were substantial, as were the volumes of dumped footwear imported from the six subject sources. Counsel noted that, by comparing the average material cost of domestically produced goods to the FOB values of goods from the subject sources, it appeared that, in many instances, footwear was being exported at prices less than what material alone would cost in Canada.

Counsel argued that retailers, for fear of losing market share, were reluctant to increase price points in response to operating costs which were rising due to "overstoring" and inflation. This led retailers to rely increasingly on imports during the review period and, particularly, in the period following the final phase out of quotas on

1. [1979] 1 F.C. 247.
2. [1982] 2 F.C. 283.

women's footwear in 1988. Thus, the availability of dumped and subsidized goods, it was claimed, enabled retailers to maintain obsolete price points at the expense of the domestic footwear industry.

Counsel argued that the causal link between the material injury suffered by the domestic industry and the dumped and subsidized footwear was reflected, first, by the losses of market share and production by domestic manufacturers and the accompanying increases in market share of imports from the subject sources. Second, there was the evidence offered by various individual domestic producers as to the impact of imports on their production and pricing decisions.

Counsel also asserted that athletic and so-called ath-leisure footwear represented a continuation of the canvas sneakers of earlier decades. These goods, it was alleged, were not substitutable for the subject goods to any great degree. The subject goods are designed for walking, whereas true athletic shoes are designed for running. Therefore, any changes in demand for this type of footwear could not be used to account for the material injury suffered by the domestic industry.

The possibility that domestic products were somehow deficient was rejected by counsel as a possible explanation of the material injury being suffered. It was claimed that the practice of "subbing"[3] by Canadian retailers was evidence that domestic footwear was not perceived as inferior. Counsel also dismissed the argument that the domestic industry should have relied on exports to the United States, niche marketing or greater advertising as means of improving its situation.

Finally, with regard to the request to exclude dyeable satin shoes from a material injury finding, counsel noted that, although it had been alleged initially that such shoes were not made in Canada, it had been shown that they were, in fact, manufactured domestically, albeit in small quantities. Counsel requested that, if the Tribunal were to grant an exemption, the product definition clearly limit the scope of the exemption.

THE RESPONSE

Counsel for the Canadian Importers Association, the People's Republic of China, M & M Trading Inc. and the Skorimpex Foreign Trading Company Ltd. claimed that imports of dumped and subsidized footwear from the subject sources had not caused, were not causing and were not likely to cause material injury to the domestic production of like goods.

Counsel questioned the authenticity of the production data presented in the pre-hearing staff report which SMAC had used, in part, as evidence of material injury. Counsel also questioned whether the witnesses for SMAC represented a "major proportion" of the domestic boot industry, as their collective output amounted to less than 15 percent of total Canadian production of boots.

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3. Subbing occurs when a store buyer underestimates the demand for a given style of imported footwear or when orders are cancelled at the last moment, and the retailer calls on a domestic manufacturer to supply footwear similar to the imported product.

Counsel asserted that the uses and characteristics of boots and shoes did not closely resemble one another. As well, counsel noted that, for three of the six subject sources, the preliminary determination only dealt with leather boots. Therefore, counsel contended that the Tribunal had to deal with each of the four product classes separately.

The phase out of quotas for women's footwear was cited as the most significant factor affecting the footwear market in recent years. It was alleged that the pent-up demand for low-priced, fashionable footwear which had developed during the quota regime led to a temporary surge in imports in 1989.

Counsel asserted that domestic producers focussed on the medium- and high-priced segments of the market, while imports from the subject sources were targeted at the low end. Counsel compared the average landed cost of imports from select subject sources, with anti-dumping duties included, to average domestic wholesale prices and concluded that, in almost every instance, imports were still cheaper. Therefore, counsel argued that the injury resulted from low-cost imports and not from dumping or subsidizing and, in accordance with past precedents, a finding of material injury was not warranted.

The increase in sales of athletic and ath-leisure footwear was alleged to explain a significant portion of the decrease in the market share of domestically produced footwear. Domestic products were claimed to have been more vulnerable than imports because they were more traditional in styling. Counsel asserted that the inability and unwillingness of domestic manufacturers to meet changing fashion needs had hurt their competitive position.

Counsel argued that the bankruptcy in early 1989 of Rizzo & Rizzo, a large retail footwear chain, in addition to having affected the profits of several individual manufacturers, affected the industry as a whole because of depressed prices caused by the liquidation of the company's inventory. As well, counsel suggested that the bankruptcy may have affected the assessment of the credit worthiness of the entire footwear industry by lenders.

Finally, counsel suggested that the appreciation of the Canadian dollar in terms of the US dollar may have obscured increases in the price of imports, which is often denominated in US currency.

Counsel argued that the price of leather boots from Poland had increased in recent years. However, these increases may not have been apparent because an increasing proportion of Polish exports consisted of "booties" or "bootlets," which had a lesser leather component and, accordingly, were relatively less expensive. Counsel argued that Poland was a low-cost producer due to low labor costs and production economies of scale. Furthermore, it was claimed that Polish boots were targeted only at the low end of the Canadian market and represented an inferior product to domestic goods. Counsel also submitted that prices of Polish boots would continue to increase because of rises in energy and labor costs and increases in sales to the USSR.

Counsel for the Canadian Shoe Retailers' Association (CSRA) and the Retail Council of Canada (RCC) also argued that the dumped and subsidized imports had not caused, were not causing and were not likely to cause material injury.

It was alleged that conditions in the domestic industry may have been affected by the prices and volumes of undumped or unsubsidized footwear. Counsel also noted that the overall market for the subject footwear declined from 1986 to 1989. Further, counsel alleged that there had been a shift in consumer preference towards leather footwear, an increase in demand for both better quality footwear and low-priced disposable goods, demographic changes and a growing trend for consumers to purchase footwear in the United States.

Finally, counsel suggested that the domestic industry could not be truly productive because most companies were competing for the same small market. As well, it was alleged that few domestic manufacturers made use of the latest technologies.

Counsel argued that changes in market share of domestically produced goods and imports from the subject sources in and of themselves did not offer proof of a causal link between dumping and subsidizing and material injury on the part of Canadian manufacturers. Counsel also responded to SMAC's arguments with respect to retailers' alleged unwillingness to increase price points by asserting that competition was responsible for preventing retailers from increasing prices. As well, counsel submitted that there was no evidence to suggest that the subject footwear was designed for walking and athletic footwear, for running. In fact, the evidence of retailers suggested that there was an overlap between the two categories. In addition, they rejected the argument that the existence of "subbing" implied Canadian goods were comparable to imports.

Counsel stated that the continuation of anti-dumping and countervailing duties would not lead retailers to increase purchases of domestically produced footwear. Instead retailers would either switch to factories within the subject countries which had lower margins of dumping or to non-subject sources. Counsel further asserted that prices of domestic goods would not increase without a corresponding increase in overall value. They also argued that the duties would have a suppressive effect on domestic prices. That is, retailers would continue to try to achieve a target blend of gross margins on domestic and imported products, and, if because of the duties, they would seek larger margins on domestic footwear by demanding lower prices from their suppliers.

Counsel for the Brazilian Ministry of Finance and ADICAL argued that imports of the subject footwear from Brazil were low-cost imports and that the difference between Canadian wholesale prices and Brazilian prices could not be fully explained by the dumping and subsidizing. To support their assertions, counsel presented the results of various analyses in which they compared the average landed values of Brazilian leather boots and shoes, with anti-dumping duties included, to average wholesale prices of domestic footwear and concluded that Brazilian imports would still be less expensive than comparable domestic products. Brazilian footwear was also claimed to have a higher labor content than domestic footwear made possible by relatively lower wage rates, resulting in a more intricate fabrication and unique appearance.

Counsel argued that the Tribunal should view the degree of dumping as a percentage of the total normal value of all subject goods reviewed by the Deputy Minister and not as a percentage of the volume of dumped goods. Using this approach, the weighted average margin of dumping for both leather shoes and leather boots was calculated by counsel to be lower than the margins presented in the final determination.

It was noted by counsel that the major subsidy available to footwear manufacturers was being eliminated by the Brazilian government. Counsel also argued that the amount of any countervailing duty would be so small as not to benefit the Canadian industry.

REQUEST FOR EXCLUSION

Counsel for Shoe Sales Canada requested that the dyeable satin shoes imported by his client be excluded from any finding of material injury on the basis that these shoes were intended for one-time use only and, therefore, did not compete directly with other non-leather shoes. Counsel also noted that, although a Canadian producer, Francine Footwear Limited, manufactured dyeable satin shoes, the production was only minimal. Counsel further noted that, even with the addition of anti-dumping duties, the average landed value of the shoes imported by Shoe Sales Canada would be less than the wholesale prices of dyeable shoes manufactured by Francine Footwear Limited. Finally, he argued that Shoe Sales Canada was reselling the imported product at prices higher than the price of the Canadian product and, consequently, imports by his client could not be injuring Francine Footwear Limited's production of dyeable satin shoes.

PRELIMINARY ISSUES

SMAC's Standing as a Complainant

At the outset of the hearing, counsel for the Canadian Importers Association questioned whether SMAC, the association that had originally filed the complaint with National Revenue, was truly representing domestic women's footwear manufacturers and could thus be granted standing as the complainant for purposes of the Tribunal's inquiry. Counsel's concerns were raised as a result of SMAC's written statement indicating that the filing of the complaint leading to this inquiry was at the initiative of SMAC's President, who claimed to be acting on behalf of the Association's members. Counsel also argued that the Canadian producers scheduled to appear as witnesses at the hearing did not represent a major proportion of the domestic industry in each of the four product categories under inquiry.

Counsel for the Government of Brazil and ADICAL stated that, in light of various press reports which claimed that a number of domestic producers did not support the Association's undertaking or had not been consulted on the issue, they had sought the names of SMAC members which were claiming to have been materially injured. This request, they added, had not been followed up by the Association and, consequently, had impeded their clients from responding adequately to the claims of injury. Finally, counsel for the CSRA and RCC claimed that the few producers who were coming forward as witnesses to complain about imports of leather and non-leather boots did not have standing as they represented much less than the minimum threshold of domestic production necessary to qualify as representing a "major proportion" of the Canadian production of leather and non-leather boots.

Counsel for the complainant responded by claiming that the membership of SMAC accounted for more than 75 percent of total Canadian production of the subject footwear and that, therefore, the Association represented a "major proportion" of domestic production of like goods. They asserted that SMAC had standing as a

complainant because it was not necessary under Canadian law that the individual firms participating directly in an inquiry account for a major proportion of the industry. Counsel also claimed that the officials of SMAC, who would be testifying, believed themselves to be in a position to speak for the totality of Canadian manufacturers. Furthermore, the President of SMAC also testified that he had been authorized by his Board of Directors to pursue a complaint with Revenue Canada and, ultimately, with the Tribunal and subsequently produced, for the record, an extract of the minutes of the Board meeting authorizing the pursuit of the complaint.

There was some allegation and evidence that some members were dissenting from the position of the Association. However, unless there is substantive evidence that an association does not represent members who account for a major proportion of the domestic production, the Tribunal grants standing to such an association to act as the complainant in inquiry proceedings. The Tribunal should not inquire into the internal management and procedures of an association and should not lift the corporate veil in order to ascertain the position of each and every member of the association. The Tribunal, like any party dealing with a corporation or an association, should be entitled to assume that the actions of officers specifically authorized or acting within their usual mandate and authority are the valid expression of the will of the corporation or association.

Furthermore, the Tribunal is of the opinion that the number of producers that come forward to provide evidence at the hearing is not, in itself, a determining factor in the question of representation. It would be unreasonable to expect that, if there are 1000 producers of a given commodity in Canada, their association would have to call 300 of them as witnesses to establish standing and subsequently prove injury to each of them. In the present case, therefore, the Tribunal reads nothing into the fact that only some domestic footwear manufacturers chose to appear as witnesses. In the end, SMAC, once it has established standing to represent Canadian producers in these proceedings, may decide how to pursue its claim before the Tribunal, be it through the testimony of a small or large number of witnesses or through other evidence in order to satisfy the Tribunal that the injury suffered by its members (Canadian producers) was material and was caused by dumped or subsidized imports.

The evidence pertaining to the production and sales of the members of SMAC convinced the Tribunal that, even taken on the basis of each product category, the Association represented more than 60 percent of the domestic production. The Tribunal having concluded that SMAC represented the domestic footwear industry in all four product categories, it was, therefore, evident that SMAC had standing regardless of how the products may be grouped subsequently into one or more classes of like goods.

Like Goods

The question of how many product classes of "like goods" involved in the present inquiry arose at the opening of the hearing as a result of representations by counsel for the complainant, the Canadian Importers Association and RCC and the CSRA on the issue of standing. The Tribunal ruled that, as a matter of precaution, it would initially treat the four classes of goods which were the subject of the preliminary determination separately, namely, leather boots, non-leather boots, leather shoes and non-leather shoes. However, the Tribunal indicated that it reserved the right to regroup some or all of the

classes for the purposes of injury determination, depending on the nature of the evidence presented at the hearing. To ensure that the proper information was on the record, a request was submitted to Revenue Canada to provide separate margins of dumping and subsidizing for each of the four classes of goods.

Subsection 2(1) of SIMA defines "like goods" as follows:

"like goods", in relation to any other goods, means

> *(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 argument, counsel for the complainant submitted that the inquiry at hand involved only one product class because the uses and characteristics of leather and non-leather boots and shoes all closely resembled one another. They argued that the evidence had shown a high degree of substitutability between boots and shoes, as well as between leather and non-leather footwear. To support their assertions, counsel referred to the criteria for "like goods" as laid out in the Sarco case *(supra)*. They claimed that the Tribunal's questioning of witnesses had revealed that leather and non-leather boots and shoes met the criteria for like goods established in that case. Counsel sought to distinguish the present case from the Noury Chemical case *(supra)*. They argued that, in the case at hand, the products being considered fell under the second part of the definition of "like goods."

In argument, opposing counsel submitted that there were four categories of "like goods" to be considered, namely, women's leather boots, women's leather shoes, women's non-leather boots and women's non-leather shoes, because the uses and characteristics of the products did not closely resemble one another. Counsel for the Canadian Importers Association argued that, according to the criteria laid out in the Sarco case, boots and shoes should not be considered as like goods. They also noted that there had been separate categories of footwear laid out in the preliminary determination and that, in the case of Poland, Yugoslavia and Romania, only leather boots were involved. Counsel for the Government of Brazil alleged that consumers and retailers perceived that there was a difference between leather and non-leather footwear. Finally, counsel for the Canadian Importers Association argued that, if the Tribunal were to accept that there were four products which were not generally substitutable, then by virtue of the Noury Chemical case, the question of injury would have to be examined separately for each product.

In the Tribunal's opinion, the notion of "like goods" in the present case clearly does not fall within the first part of the definition provided by SIMA, that is, goods which are "identical in all respects." Therefore, the Tribunal must consider the issue in terms of similarity of uses and characteristics.

In considering whether the uses and characteristics of boots and shoes closely resembled one another, the Tribunal first considered the physical characteristics of boots and shoes. Essentially, the Tribunal is of the view that boots and shoes do not share the same physical characteristics. Boots do not look like and are not shoes. The

Tribunal notes that the fundamental design of boots and shoes differs in that boots cover the ankle, whereas shoes do not.

The basic manufacturing operations for constructing a boot or a shoe, such as cutting, stitching or assembly, are, for the most part, the same. However, a major construction difference does occur in the lasting department where a higher last is required in the back of boots due to the length of the shaft, that is, the part of the boot above the ankle. The overall measurements of a boot last are also larger than a shoe last because of the heavier lining required in a boot. In terms of raw materials, both boots and shoes can be constructed with uppers of either leather or non-leather. Some of the components used in constructing boots and shoes are different: boots generally require heavier soles and linings to protect against adverse weather conditions. Overall, the Tribunal is of the view that the manufacturing of boots and shoes, in terms of both the operations undertaken and the components used, is more dissimilar than similar.

Beyond physical and manufacturing considerations, selling patterns differ for boots and shoes. Although boots and shoes are usually sold by the same retailers, boots tend to be sold largely during the fall and winter, while shoes are sold throughout the year.

Essentially, boots and shoes have the same generic use, namely, walking, but the specific uses of boots and shoes may differ. The Tribunal agrees that women would not substitute winter boots for shoes on a dance floor. In the same vein, the Tribunal adds that most women would not likely wear dress shoes as their principal outdoor footwear during the winter. More fundamentally, a woman entering a store to buy a pair of boots would not decide instead to buy shoes for the same use or vice versa. The products are not substitutable for the end user. The Tribunal notes that so-called "booties" or "bootlets" are something of an anomaly in that they have many characteristics which pertain to boots, for example, they cover the ankle, but are frequently used as a shoe substitute by consumers. Similarly, evidence revealed that some consumers, notably teenagers, wore other casual shoes outdoors in the winter instead of boots. However, such products and uses appear to represent a relatively small percentage of the overall market and do not alter the general observation that, for most consumers, boots and shoes have different uses.

Price is not a useful characteristic in determining whether boots and shoes are like goods because there is no consistent pattern. That is, depending on the materials used, the nature of the styling, the marketing considerations, etc., it is possible to find shoes that are more expensive than boots as well as the reverse. Similarly, considerations such as quality and performance characteristics are not relevant in this instance.

On balance, the Tribunal concludes that boots and shoes are not like goods because they are fundamentally different in physical characteristics, design, manufacturing and uses. Because of this, the Tribunal is of the view that they are not like goods, the uses and characteristics of which closely resemble one another. The Tribunal is of the opinion that the class of boots includes "booties" and "bootlets" with which they share a greater proportion of characteristics and uses.

The Tribunal also considered whether leather and non-leather footwear are like goods. The Tribunal first notes that the physical appearance, design and fashion of leather and non-leather footwear is very similar.

In terms of manufacturing, leather and non-leather footwear are produced in largely the same manner using the same operations. Similarly, the components of leather and non-leather footwear, such as the heel, sole, inner sole and lining, are often the same. However, some evidence was adduced at the hearing that production employees must receive additional training before they can handle leather.

Leather and non-leather footwear are generally marketed in a similar manner; that is, they are sold by the same retailers at the same time of year. The prices of leather and non-leather footwear do overlap, although the Tribunal notes that non-leather footwear tends to dominate the low end of the price spectrum, while leather dominates the high end.

Evidence revealed that consumers generally preferred leather footwear if all other factors such as price and styling are equal. For the most part, however, consumers appear to use leather and non-leather footwear for similar uses, although non-leather footwear could be used differently in some instances because of its superior water-resistant capabilities. Conflicting evidence was adduced at the hearing as to whether consumers generally perceived leather and non-leather footwear as being substitutes, with some witnesses claiming that consumers were aware of the differences and viewed them as important and other witnesses suggesting most consumers were not cognizant of a difference. Overall, the Tribunal is convinced that consumers generally use leather and non-leather footwear interchangeably and that this substitution is particularly evident at the lower price ranges.

On balance, the Tribunal is of the opinion that the uses and characteristics of leather and non-leather footwear closely resemble one another and that, therefore, they should be considered as like goods for the purposes of injury determination.

In sum, the Tribunal concludes that the present inquiry involves two classes of "like goods," namely, women's leather and non-leather boots and women's leather and non-leather shoes, and that the question of whether dumped and subsidized goods have caused, are causing or are likely to cause material injury to domestic production must be considered separately for each class.

Statistical Data Contained in the Pre-Hearing Staff Report

Counsel for the Canadian Importers Association argued that much of the information compiled by the Tribunal's staff could not be regarded as reliable or valid because of the various estimations that had been made. By way of example, they noted that production volumes had been estimated for a certain number of domestic manufacturers that either had gone bankrupt or had ceased production of the subject footwear during the review period.

The Tribunal is of the view that statistical estimates, used as evidence in this and any other case, frequently represent the best and most reliable information on the state of the industry and the market.

The Tribunal always attempts to get factual data directly from the industry as a whole and from all the participants to an inquiry. However, information is not always easily obtained or forthcoming, and there is invariably a need to estimate some components of the statistical information developed for an inquiry. This tends to be particularly true in large inquiries, such as the present case, where there are many manufacturers and importers.

Nonetheless, the Tribunal is of the opinion that the information estimated in this case was developed using recognized methodological approaches and represents valid and reliable information. Participants in an inquiry are provided with explanations of the methodologies used by the Tribunal staff to estimate the statistical information and are free to challenge the data as well as the appropriateness of the methodologies used. Only after all parties have had an opportunity to test, supplement or correct such information will the Tribunal accept the data as evidence and give them weight.

In response to the specific examples raised by counsel, the Tribunal is satisfied that the estimates of production contained in the pre-hearing staff report are reliable and were not discredited by the examples raised by counsel. The Tribunal also notes that the decline in domestic production of the subject footwear provided in the pre-hearing staff report is very similar in magnitude to the decline shown by a monthly Statistics Canada survey of domestic women's footwear manufacturers and views this as confirmation of the trends set out in the staff report.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATIONS

The period of investigation selected by the Deputy Minister for the purpose of the preliminary and final determinations of dumping extended from January 1, 1989, to August 31, 1989, while the subsidy investigation covered the period January 1, 1988, to August 31, 1989.

The weighted average margins of dumping found by the Deputy Minister for the final determination were as follows:

	Percentage
Brazil	25.8
Taiwan	27.5
China	47.3
Yugoslavia	26.2
Poland	38.7
Romania	20.0

The weighted average amount of subsidy, in the case of Brazil, was 6.05 percent in 1988 and 3.50 percent in 1989.

Following the issuance of the final determination, the Tribunal requested that the Deputy Minister provide a breakdown of results by product category. The weighted average margins of dumping given were as follows:

	Percentage
Brazil	
Leather boots	8.5
Leather shoes	13.9
Taiwan	
Leather boots	10.7
Leather shoes	19.3
Non-leather boots	16.2
Non-leather shoes	18.0
China	
Leather boots	47.1
Leather shoes	47.2
Non-leather boots	47.0
Non-leather shoes	47.6
Yugoslavia	
Leather boots	26.2
Poland	
Leather boots	38.7
Romania	
Leather boots	20.0

Revenue Canada advised that the information supplied by exporters generally contained sufficient information to determine whether the footwear was leather, non-leather, boots or shoes. However, in cases where exporters had not provided a reply to the Tribunal's questionnaire, there was insufficient information to make this determination. In the case of Brazil and Taiwan, the determination was based on imports that represented approximately 60 percent, respectively, of the total subject footwear imported during the investigation period from both of these countries. This explains why the weighted average margin of dumping by country is not directly comparable to the weighted average margin by product category.

PRODUCTION, MARKET AND FINANCIAL CONSIDERATIONS

For purposes of its inquiry into the alleged material injury caused by the dumping and subsidizing of the subject goods from the named countries, the Tribunal was particularly interested in the situation of the domestic producers and of the domestic market between 1986 and 1989.

To obtain the necessary information, the Tribunal staff conducted extensive research into the subject matter through detailed questionnaires sent to importers and manufacturers. The staff also visited over 60 firms in order to ensure that the requested data in the questionnaires were well-understood and provided in a consistent and timely

fashion. Comprehensive import, market, production and other statistical tables were prepared in order to shed some light on the situation of the Canadian industry and marketplace during the past four years.

The statistics generated by the staff showed that the total apparent market of both the subject women's boots and shoes declined from 36.5 million pairs in 1986 to 33.8 million pairs in 1989. During this period, Canadian production fell from 17.1 million pairs to 10.3 million pairs, for a decline of 6.8 million pairs, or more than twice the decline in market demand. As a result, the domestic producers' share of the market from sales from domestic production declined from 46 percent in 1986 to 30 percent in 1989. During this period, sales from imports from subject sources took 13 points of market share from producers while imports from non-subject sources took 2 points. The remaining share was taken by the producers' own imports, which increased from a mere 89,000 pairs in 1986 to 438,000 pairs in 1989, representing approximately 1 percent of total demand in 1989. The profitability of the subject manufacturers, as a whole, for which financial data were supplied to the Tribunal, declined from approximately 7 percent of net sales in 1986 to a 1-percent loss in 1989. The industry also suffered a reduction of more than 2,300 production employees during the period under review. Its rate of capacity utilization also declined from 72 percent in 1986 to 55 percent in 1989.

As discussed earlier as a preliminary issue, although the Tribunal and counsel adduced separate evidence on the four product categories enumerated in the Deputy Minister's definition of the subject goods, the Tribunal came to the conclusion that there were two distinct classes of goods and that injury had to be assessed in relation to each one of these two different industries, that is, women's leather and non-leather boots and women's leather and non-leather shoes. As such, for purposes of analyzing the effects of dumping and subsidizing or other factors on these two separate industries, the various production, import, market and other tables were merged to provide aggregate data for each one of these two classes of subject goods.

Women's Leather and Non-leather Shoes

This class of goods, which is by far the largest of the two classes under inquiry, represented, in 1989, over 80 percent of the subject footwear sold in Canada. Over 60 percent of the shoes in this class were made of leather.

The subject sources for imports of shoes were Brazil for leather shoes and Taiwan and China for both leather and non-leather shoes. Imports from these three countries increased their share of total imports from 66 percent in 1986 to 72 percent in 1989. Imports from Taiwan, which accounted for approximately half of the imports from the subject sources during the period under review, increased from 6.7 million pairs in 1986 to 9.9 million pairs in 1987. In 1988, these imports fell to 7.1 million pairs before increasing to 7.7 million pairs in 1989. Imports from the second largest source of subject shoes, Brazil, increased from 3.8 million pairs in 1986 to 5.4 million pairs in 1989. Imports from China increased from 1.5 million to 3.0 million pairs during the same period.

Demand for the subject women's shoes fell by approximately 6 percent during the review period. The decline in non-leather shoes, which was close to 20 percent, more than offset the 4-percent increase registered for leather shoes. Imports increased by 4 million pairs, or by 22 percent, between 1986 and 1989. Imports from the subject sources accounted for 100 percent of the increase in total imports of the subject shoes. As a result, sales from imports from subject sources increased their market share from 42 percent in 1986 to 56 percent, in 1989, while sales from imports from non-subject sources increased their share from 19 to 21 percent, and sales from domestic production declined their share from 39 percent to 25 percent during the same period.

Between 1986 and 1989, domestic production of shoes declined by more than 5 million pairs, or 45 percent, resulting in a decline of 21 percentage points in capacity utilization, as well as a decline of more than 200 pairs, or 8 percent, in the average annual output per employee. Employment also declined by over 2,000 or 40 percent. Besides experiencing an important decline in gross margins, the shoe producers also experienced a significant drop in net profits, from 7 percent in 1986 to a loss of 1 percent in 1989. The decline in profitability was more acute in 1989 when the shoe industry lost 5 percentage points alone in that year.

Women's Leather and Non-leather Boots

The subject boots represented less than 20 percent of the total market of the subject footwear. Of the subject boot market, leather boots accounted for approximately 80 percent of the subject boots purchased by Canadian consumers.

Brazil, Poland and China were the three subject countries that experienced the most significant gains during the period under review, and more so during 1988 and 1989. Brazil gained 13 points of import share, while Poland and China gained 14 and 8 points, respectively. The share of imports held by Romania and Yugoslavia varied from year to year, but remained at or below 5 percent. The share held by the Taiwanese boots, on the other hand, declined from 55 percent in 1986 to 16 percent in 1989. Italy, an important non-subject source, saw its share of imports decline from 26 percent in 1987 and 1988 to 16 percent in 1989.

Demand for the subject boots dropped by approximately 20 percent between 1986 and 1989. The decline in consumer demand for non-leather boots was close to 50 percent, while demand for leather boots only declined slightly. During this period, total boot imports increased from 1.4 million pairs in 1986 to 1.8 million pairs in 1989. Imports from the subject sources increased from 0.9 million pairs to 1.2 million pairs, while imports from non-subject sources increased from 0.5 million pairs to 0.7 million pairs. In terms of market share, sales of the subject imports increased their share from 15 to 21 percent between 1986 and 1989, while sales of imports from non-subject sources increased their share from 7 to 11 percent. During this same period, sales from domestic production declined from 5.0 million to 3.5 million pairs, and, as a result, lost 10 points of market share, of which 6 points were lost to subject imports.

Between 1986 and 1988, domestic production of boots declined by approximately 0.8 million pairs or 16 percent. In 1989, the industry suffered a further decline of 0.6 million pairs, resulting in a decline of 9 percentage points in capacity utilization. The same year, average annual output per employee also declined by more than 300 pairs or

by 17 percent. Employment varied during the review period, but, overall, it declined by 11 percent. The boot industry also experienced a significant erosion of its gross margins and net income before taxes. Net income declined from 7 percent of sales in 1986 to a loss of 1 percent in 1989. Again, the decline in net profits was more acute in 1989 when boot producers lost 5 points of profit in that year alone.

REASONS FOR THE DECISION

There was general agreement among the parties that the women's footwear industry was in a severely depressed state. The serious decline in employment, production, sales, market share, capacity utilization, productivity, gross margins and profitability suffered by each of the shoe and boot industries are of such magnitude as to lead the Tribunal to conclude that the injury was material. What remains to determine is whether the material injury to each of these two industries was caused by dumped and subsidized imports.

Opposing counsel advanced numerous alternative explanations for the injury being suffered by the Canadian producers.

Counsel for the Canadian Importers Association referred to the lifting of quotas as the most significant factor affecting the domestic industry in recent years and claimed that there had been a surge of imports in 1989 following the final elimination of restrictions. The Tribunal notes that the quota regime in place from the end of 1985 to the end of 1988 had no real effect in curbing imports, as the volume of imports permitted to enter the Canadian market increased from year to year. Overall, total imports of the subject footwear increased by 23 percent between 1986 and 1989. In 1989, the increase in imports was 8 percent over 1988. This increase was no larger than the average annual increase between 1986 and 1989 and cannot be considered as a surge in imports as suggested by counsel. Actually, imports of boots decreased by 7 percent in 1989, while the increase in shoe imports was significantly less than what it had been in 1987. The quotas, in aggregate, were underutilized to a significant degree. Nonetheless, the quota regime did affect certain individual importers, such as new entrants in the business or retailers that wished to import directly, but were prevented from doing so, as quotas were being allocated on an historical basis.

The Tribunal is of the opinion that the operation of normal market forces would have led to an increase in imports of boots and shoes as quotas were lifted, even if there had not been dumping or subsidizing. However, it notes that the subject countries accounted for close to 100 percent of the overall increase in total imports during the period under review and, as a consequence, in a declining market, the Canadian industry lost a disproportionate amount of business from its production to imports from the subject sources. In the boot market, Canadian producers lost 7 percentage points of market share to imports from subject sources and 4 percentage points to imports from non-subject sources during the review period. In the shoe market, the industry lost 14 percentage points to imports from subject sources and 2 percentage points to imports from non-subject sources.

The Tribunal accepts that the subject countries, as well as some non-subject countries, may have a comparative cost advantage over Canadian producers and believes that the resultant lower prices for footwear would have guaranteed imports a certain presence in the domestic market regardless of any dumping or subsidizing. However, the Tribunal is convinced that the rapid and dramatic market gains made by imports from the subject countries were only made possible by the significant margins of dumping and subsidizing found by the Deputy Minister.

Another explanation put forward for the current condition of the domestic industry was the bankruptcy in early 1989 of Rizzo & Rizzo, a large retail footwear chain. The Tribunal recognizes that the bankruptcy had a significant, negative impact on the 1989 financial performance of certain domestic manufacturers. In addition, retailers that had to compete head-to-head with liquidation prices likely suffered short-term decreases in sales. However, the Tribunal does not accept that the bankruptcy of Rizzo & Rizzo had a lasting effect on either domestic boot or shoe manufacturers. The cost equivalent of the company's inventory represented less than 3 percent of the $667 million footwear market in 1989 and, therefore, its liquidation, which was accomplished in a relatively short period of time, should not have had a serious price-suppressing effect. Further, any decreases in orders to domestic manufacturers should have been short-lived as the retail environment stabilized.

The Tribunal agrees that increases in demand for athletic and so-called ath-leisure footwear contributed to the decline in demand for dress and casual boots and shoes which occurred during the review period. However, the Tribunal was not persuaded by the evidence presented by various importer and retailer witnesses that this change in consumption should have affected domestic producers to a greater extent than importers. Similarly, the Tribunal does not accept that any broad demographic or socio-economic trends taking place in society, such as the aging of the population and the increase in the number of women in the labor force, should have had a disproportionally greater impact on domestic manufacturers. If anything, one would expect that these factors would result in an increased demand for Canadian products, in light of their more conservative styling.

Further, the Tribunal rejects the argument that lack of style was the critical factor in the decline in market share experienced by domestic manufacturers. The Tribunal recognizes the need of retailers to present a product mix which meets the varied needs of their target customers and the fact that some imported products offer unique fashion and style features. However, it appears to the Tribunal that price, not fashion considerations, underlies the rapid inroads that the subject goods made into the domestic market. Retailer witnesses generally agreed that one of the reasons they purchased imports from the subject sources was that their lower cost offered the opportunity to take a larger markup.

Opposing counsel also argued that domestic producers focussed on the medium- and high-priced segments of the market, while imports from the subject countries were targeted at the low end. Extensive evidence was presented during the hearing concerning the price competition faced by domestic manufacturers from imports of dumped and subsidized imports. In the particular examples presented, counsel attempted to show that, in many instances, prices of the imported footwear, even with anti-dumping duties included, would still be less than wholesale prices of comparable

domestically produced footwear. Evidence obtained through replies to questionnaires showed that both the Canadian boot and shoe industries offered products in all the price ranges offered by the subject importers, with the possible exception of the very low end of the price spectrum. The evidence adduced at the hearing also showed that, within certain price points or ranges, the imported products had an appreciable price advantage in certain cases and that, even with the addition of anti-dumping duties, many imported products could still be sold at a lower price than comparable domestic footwear. Nonetheless, the Tribunal is of the opinion that the sizable margins of dumping and large volumes of dumped goods entering Canada significantly suppressed domestic boot and shoe prices. As evidenced by the declines in gross margins, this extreme price competition prevented domestic manufacturers from raising prices sufficiently to cover rising material, labor and overhead costs. In some cases, manufacturers had to sell their product below cost in order to get orders to keep the factories open.

Although the Tribunal recognizes that certain subject countries, namely, Romania and Yugoslavia, exported much lower volumes of boots than other named countries, it notes that the size of the imported volumes from these countries was not insignificant, and with the high margins of dumping found by the Deputy Minister, these imports also contributed to the plight of the Canadian boot industry.

The Tribunal is also of the opinion that even if the weighted average margin of dumping had been calculated as a percentage of the normal value of both dumped and undumped goods, as suggested by counsel for the Brazilian exporters, the resulting lower margins would still have a significant impact on these two price sensitive markets.

Consequently, it is the opinion of the Tribunal that the dumped and subsidized imports of shoes from the named countries have cumulatively caused past and present injury to the production of like goods in Canada. The Tribunal is also of the opinion that the dumped and subsidized imports of boots from the named countries have cumulatively caused past and present material injury to the production of like goods in Canada.

With respect to the future, no evidence was presented to suggest that import volumes from the subject sources would decline. Therefore, there is every indication that material injury will continue to both industries if the anti-dumping and countervailing duties are not maintained.

The Tribunal notes that the Brazilian government recently announced that it intends to eliminate the major subsidy program benefiting footwear exporters, effective 1990. Until such time as the appropriate laws and regulations terminating the program are finally passed and implemented, the Tribunal must assess the likelihood of material injury on the basis of the four subsidy programs found to be countervailable by the Deputy Minister. The Tribunal is of the view that these subsidies, when coupled with the margins of dumping found by the Deputy Minister, are likely to continue causing material injury. In the event that the program in question were to be eliminated and subsidies, as then determined by the Deputy Minister, were at a significantly lower level, the Tribunal would be agreeable to reconsider its finding of material injury caused by subsidized imports from Brazil.

There is little doubt that imports are a fact of life for the Canadian footwear industry, given the small Canadian market and yet diverse and sophisticated tastes of its consumers. The domestic industry will not be able to produce the range of products necessary to satisfy demand, and this is particularly true of the lower priced segments of the market. However, the Tribunal was convinced that the domestic industry could still play an important role in the market and this view was expressed by many of the retailer witnesses. It is convinced that the viability of the Canadian industry was threatened by dumped and subsidized imports in the past and will continue to be in the future if anti-dumping and countervailing duty measures are not kept in place.

Concerning the request made by counsel for Shoe Sales Canada to exclude dyeable satin shoes from an injury finding, the Tribunal finds that it is not justifiable to exclude such shoes from its finding as they are manufactured in Canada. It notes, however, that the Canadian production of this type of footwear is relatively small, and, should production cease in the future or there be evidence that Canadian producers are not willing to supply this product in substantial quantities on an ongoing basis, the Tribunal will be prepared to reconsider the matter.

Counsel for the CSRA and RCC indicated that they wished to make representations, pursuant to subsection 45(2) of the Act, concerning the question as to whether the imposition of anti-dumping or countervailing duties would be in the public interest. Parties interested in making representations should submit them, in writing, to the Secretary of the Tribunal by June 15, 1990.

CONCLUSION

In light of the evidence, and taking all relevant considerations into account, the Tribunal concludes for the reasons indicated above that the dumping of leather boots originating in or exported from Brazil, Poland, Romania and Yugoslavia and leather and non-leather boots from the People's Republic of China and Taiwan, and the subsidizing of leather boots from Brazil have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

The Tribunal also concludes that the dumping of leather shoes originating in or exported from Brazil and leather and non-leather shoes from the People's Republic of China and Taiwan, and the subsidizing of leather shoes from Brazil have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

Robert J. Bertrand, Q.C.
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Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
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Sidney A. Fraleigh
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