CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, October 10, 2002

Request for Interim Review No. RD-2002-001

IN THE MATTER OF a request for an interim review of the finding made by the Canadian International Trade Tribunal on December 8, 2000, in Inquiry No. NQ-2000-004, concerning:

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

ORDER

On June 24, 2002, M & M Footwear Inc. filed a properly documented request for an interim review of the finding made by the Canadian International Trade Tribunal in Inquiry No. NQ-2000-004 concerning the above-noted goods.

Pursuant to subsection 76.01(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal has decided not to conduct an interim review.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Zdenek Kvarda
Zdenek Kvarda
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

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STATEMENT OF REASONS

BACKGROUND

On December 8, 2000, the Canadian International Trade Tribunal (the Tribunal) issued a finding in Inquiry No. NQ-2000-004 (the inquiry) that the dumping of certain waterproof footwear and bottoms originating in or exported from the People's Republic of China was threatening to cause material injury to the domestic industry.

On June 24, 2002, M & M Footwear Inc. (M & M) filed with the Tribunal a request for an interim review of the above-mentioned finding pursuant to paragraph 76.01(1)(*b*) of the *Special Import Measures Act*.[1] The Tribunal considered the request to be properly documented and, on July 30, 2002, pursuant to subrule 70(2) of the *Canadian International Trade Tribunal Rules*,[2] the parties to the inquiry were notified of the request and were provided with an opportunity to make representations by August 14, 2002. A submission was received from only one party, namely, the Shoe Manufacturers Association of Canada (SMAC), on behalf of the domestic industry. M & M was given an opportunity to respond to SMAC's submission, and it did so on August 23, 2002.

POSITION OF PARTIES

M & M argued that an interim review of the Tribunal's finding was warranted because there were new facts. In the alternative, it submitted that there had been a change in circumstances and that, even if the facts were in existence at the time of the finding, they were not discoverable by the exercise of reasonable diligence at that time. The relevant facts or circumstances cited by M & M related to the closure of the slush-moulding facilities of Carlaw Limited (Carlaw) and Bata Industries Limited (Bata) in 1998 and 1999, respectively, and the subsequent disappearance of production by the slush-moulding process in Canada. According to M & M, the disappearance of this production could not have been foreseen at the time of the inquiry in the fall of 2000, given the fact that footwear from this production was included in the product definition. On the basis of this inclusion, M & M maintains that it inferred that the production was going to be taken up by other Canadian producers. In addition, although production by Bata may have ceased by the fall of 1999, its products were still found in the marketplace during the period of the inquiry. Furthermore, M & M argued that waterproof slush-moulded footwear had unique properties that differentiated it from waterproof footwear made by domestic manufacturers. It had recently received a request for a certain waterproof slush-moulded boot from one of its major customers. Given that the domestic industry is not currently producing slush-moulded footwear, M & M submitted that an interim review of the finding was warranted, since there was no basis for concluding that such products were causing or were likely to cause material injury to the domestic industry.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. S.O.R. 91-499 [hereinafter Rules of Procedure].

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In its submission, SMAC opposed M & M's request on the basis that there had been no new facts or changed circumstances that would warrant an interim review. SMAC submitted that the shutdown of production by slush moulding in Canada was well known before the Tribunal commenced the inquiry in September 2000. Consequently, M & M had ample opportunity to seek an exclusion for slush-moulded footwear during the inquiry. In addition, SMAC noted that the slush-moulded boots described by M & M in its request appeared to be intended to serve the same market as the 100 percent waterproof PVC or rubber injection-moulded boots that are made by several domestic producers. SMAC further submitted that, although slush moulding cannot replicate the range of waterproof footwear produced by injection moulding, virtually any design capable of being made by slush moulding can be made by injection moulding. Therefore, the goods described in M & M's request would compete with domestic goods.

ANALYSIS

The Tribunal notes that subsection 76.01(1) of SIMA provides that the Tribunal may conduct an interim review of a finding or order. Such an interim review may concern the whole finding or order or any aspect of it. Pursuant to subsection 76.01(3), the Tribunal shall not conduct an interim review, unless the requester satisfies the Tribunal that the review is "warranted".

Rule 72 of the Rules of Procedure states that, in order to decide whether an interim review is warranted, the Tribunal may request the parties to provide information concerning whether changed circumstances or new facts have arisen since the making of the order or finding, or concerning facts that were not put in evidence during the original proceedings and that were not discoverable by the exercise of reasonable diligence at that time. Similarly, the Tribunal's guideline on interim reviews[3] indicates that an interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the order or finding. The guideline also indicates that an interim review may be warranted where there are sufficient facts that, although in existence, were not put in evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time. In other words, the mere existence of new facts or changed circumstances, or facts that were not reasonably discoverable, does not necessarily mean that there will be a review; they must also be sufficient to warrant a review.

Having regard to the foregoing, the Tribunal will first examine the facts pertaining to the disappearance of production by the slush-moulding process in Canada. The Tribunal notes that it is not in dispute that Carlaw and Bata were the last Canadian producers to use the slush-moulding process. Nor is it in dispute that Carlaw closed its operations in 1998 and that Bata shut down its manufacturing facilities no later than the latter half of 1999. Moreover, it is clear from M & M's submissions that it was aware of these closures at the time of the inquiry in the fall of 2000. However, M & M claims that, since the domestic industry did not exclude waterproof slush-moulded footwear from the products under investigation in the inquiry, it was reasonable to infer that other domestic producers intended to take up the slush-moulding process. On this basis, M & M argues that it could not reasonably have known that production in Canada using the slush-moulding process would cease.

The Tribunal does not find the above argument compelling. The Tribunal notes that it is common in SIMA injury inquiries for some goods that are initially included in the range of goods under examination to be excluded from an injury determination by the Tribunal on the basis of submissions from parties. The Tribunal further notes that M & M was a party to the inquiry and participated in the hearing. It is a matter of public record in the inquiry that an exclusion for flocked suede footwear was granted.[4] In the Tribunal's

3. *Guideline — Interim Reviews*, effective April 15, 2000.
4. The exclusion covers flocked suede waterproof PVC injection-moulded footwear.

view, M & M could have asked for slush-moulded footwear to be excluded at that time. As far as the Tribunal is concerned, if M & M had any questions regarding future domestic production of slush-moulded footwear, it would have been more reasonable to raise this matter during the inquiry than to rely on the assumption that the other Canadian producers would take over the process.

The Tribunal notes that M & M also argues that the issue of future production in Canada was clouded by the fact that Bata's production in the latter half of 1999 would have been marketed in the fall of 2000. According to M & M, since the inquiry took place in the fall of 2000, it was "too early" at that time for it to be able to identify "a shortage" of slush-moulded products. The Tribunal finds this explanation by M & M for its inaction in the inquiry to be equally unpersuasive. Even if there was some slush-moulded footwear on the market in the fall of 2000, M & M knew or should have known that this stock could not last very long without domestic production being taken up by other Canadian producers. Again, the Tribunal is of the view that M & M should have inquired about this at the time of the inquiry and not simply relied on an assumption.

In sum, in regard to the above submissions made by M & M, the Tribunal finds that the closure of the slush-moulding facilities of Carlaw and Bata and the cessation of production of waterproof slush-moulded footwear in Canada are not new facts or changed circumstances or facts that have arisen since the making of the order or finding that were not discoverable by the exercise of reasonable diligence by M & M at the time of the inquiry. The Tribunal notes that M & M apparently has recently received an inquiry from a customer regarding the possibility of supplying a certain slush-moulded product, which may constitute a new fact in this matter. In the Tribunal's opinion, this type of customer inquiry is part of the routine ebb and flow of the marketplace and, by itself, does not constitute sufficient grounds for conducting an interim review.

For the foregoing reasons, the Tribunal determines that an interim review of the finding is not warranted. Consequently, pursuant to subsection 76.01(4) of SIMA, the Tribunal has decided not to conduct an interim review.[5]

Richard Lafontaine
Richard Lafontaine
Presiding Member

Patricia M. Close
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Member

Zdenek Kvarda
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Member

5. M & M also requested that the Tribunal, in effect, expand the existing exclusion for flocked suede PVC injection-moulded footwear to cover certain waterproof slush-moulded footwear that has been flocked with suede dust or suede powder. Since the Tribunal has found no basis on which to conduct an interim review, there is also no basis on which to expand the scope of the existing exclusion.