



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Request for Interim Review
No. RD-2005-001

Leather Footwear With Metal Toe
Caps

*Order and reasons issued
Friday, November 25, 2005*

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IN THE MATTER OF a request for an interim review, under subsection 76.01(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on December 27, 2001, in Inquiry No. NQ-2001-003, concerning:

**LEATHER FOOTWEAR WITH METAL TOE CAPS ORIGINATING IN OR EXPORTED
FROM THE PEOPLE'S REPUBLIC OF CHINA, EXCLUDING WATERPROOF FOOTWEAR
SUBJECT TO THE FINDING MADE BY THE CANADIAN INTERNATIONAL TRADE
TRIBUNAL IN INQUIRY NO. NQ-2000-004**

ORDER

On August 29, 2005, A.M. Footwear Inc. filed a request for an interim review of the finding made by the Canadian International Trade Tribunal in Inquiry No. NQ-2001-003 concerning the above-noted goods.

Pursuant to subsections 76.01(3) and 76.01(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal is not satisfied that an interim review of the above-noted finding is warranted and, consequently, has decided not to conduct an interim review.

Meriel V. M. Bradford

Meriel V. M. Bradford
Presiding Member

Zdenek Kvarda

Zdenek Kvarda
Member

James A. Ogilvy

James A. Ogilvy
Member

Hélène Nadeau

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STATEMENT OF REASONS

BACKGROUND

1. On December 27, 2001, the Canadian International Trade Tribunal (the Tribunal), in Inquiry No. NQ-2001-003, made a finding that the dumping of leather footwear with metal toe caps originating in or exported from the People's Republic of China, excluding waterproof footwear subject to the finding made by the Tribunal in Inquiry No. NQ-2000-004, was threatening to cause material injury to the domestic industry.
2. In the finding made December 27, 2001, the Tribunal excluded the following products: (1) athletic style and hiking style leather safety shoes of cement construction;¹ and (2) leather boots with metal toe caps and rubber outsoles, for use in motorcycle riding, incorporating zippers or buckles and a commonly recognized motorcycle brand name affixed permanently.
3. On August 29, 2005, A.M. Footwear Inc. (A.M. Footwear) filed with the Tribunal a request for an interim review of the above-mentioned finding, pursuant to subsection 76.01(1) of the *Special Import Measures Act*.² A.M. Footwear was seeking an exclusion for "leather safety footwear imported or sold by AM Footwear that incorporates a steel toe engineered with Chromium and Titanium Nitride components in accordance with a Canadian Patent Pending filed by AM Footwear."
4. On September 22, 2005, the Tribunal decided that the request was properly documented and, pursuant to subrule 70(2) of the *Canadian International Trade Tribunal Rules*,³ the parties to the inquiry were provided with a copy of A.M. Footwear's request and given an opportunity to make representations. On October 2 and November 1, 2005, the Shoe Manufacturers' Association of Canada (SMAC), on behalf of its members,⁴ filed submissions opposing the request for an interim review. A.M. Footwear was given opportunities to respond to SMAC's submissions, and it filed replies on October 14 and November 7, 2005.

POSITIONS OF PARTIES⁵

5. A.M. Footwear submitted that an interim review was warranted given that new facts had arisen since the finding. The relevant facts cited by A.M. Footwear related to the existence of a new footwear product that is not produced in Canada and is distinguishable from the types of footwear available from Canadian production. According to A.M. Footwear, because it incorporates a chromium and titanium nitride toe cap for which a patent has been filed in Canada, this footwear is a new and unique high-end product that exceeds CSA International (CSA) standards, commands a premium price and is intended to serve a different market segment. In addition, the product offers performance that is superior to traditional steel toe boots in terms of strength, weight, corrosion resistance and a thinner profile. Furthermore, A.M. Footwear submitted that SMAC did not claim that the domestic industry is now producing or plans to commence producing footwear incorporating a chromium and titanium nitride toe cap.

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1. For greater clarity, "shoes" are defined as footwear worn below the ankle, and "cement construction" refers to a process where the outsole is cemented to the bottom of a lasted upper.
 2. R.S.C. 1985, c.S-15 [*SIMA*].
 3. S.O.R. 91/499 [*Rules*].
 4. The following members of SMAC participated in Inquiry No. NQ-2001-003: G.A. Boulet Inc., Canada West Shoe Manufacturing Inc., L.P. Royer Inc., STC Footwear, Tatra Shoe Manufacturing and Terra Footwear.
 5. This portion of the text is intended only to outline a number of key submissions made by the parties. It is not intended to be exhaustive.

6. SMAC submitted that some of its members produce, in Canada, leather footwear with metal toe caps which meets or exceeds CSA standards. It argued that A.M. Footwear's product, rather than establishing a new market, will simply compete directly with all other CSA certified work boots currently available in the Canadian market. In addition, SMAC noted that the comparison of test results shows that the strength and safety aspect of A.M. Footwear's product position it to compete directly with Canadian production of leather safety footwear. SMAC concluded that it opposes the request for an interim review and argued that the threshold for initiating an interim review is very high and, absent a fundamental change in circumstances, that a finding should remain undisturbed for five years. Finally, SMAC submitted that, rather than requesting an interim review, a more appropriate procedure would be for A.M. Footwear to request a product exclusion during the expiry review of the finding that could take place in 2006 if the Tribunal decides that such a review is warranted.

ANALYSIS

7. Subsection 76.01(1) of *SIMA* provides that the Tribunal may conduct an interim review of an order or finding. Such an interim review may concern the whole order or finding or any aspect of the order or finding. 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.

8. Having determined, as indicated above, that the request was properly documented, the Tribunal must decide if an interim review is warranted. In light of subsection 76.01(3) of *SIMA*, interim reviews should be undertaken only when there are sufficiently compelling reasons to persuade the Tribunal to do so. New facts or changes of circumstances are not, in and of themselves, enough to warrant an interim review. It is reasonably expected that new facts will arise and circumstances will change over the course of a finding.

9. However, as indicated in the Tribunal's *Guideline on Interim Reviews* (the *Guideline*), the question is whether there are sufficient new facts or changes of circumstances to warrant an interim review, or whether an interim review is warranted due to facts that were not put into evidence during the original inquiry and not discoverable by the exercise of reasonable diligence at the time.

10. Basing its conclusion on the submissions and replies it received, the Tribunal is of the view that an interim review is not warranted. The Tribunal grants product exclusions only in exceptional circumstances. The *Guideline* provides examples of sufficient new facts or changes of circumstances illustrating the likely impact on a finding that these must have in order to warrant an interim review. It refers to situations in which the domestic industry has ceased production of like goods or where foreign subsidies have been terminated.

11. In this case, the domestic industry still produces and sells leather safety footwear with metal toe caps in the Canadian market. On the basis of the submissions filed by the parties, the Tribunal is of the view that A.M. Footwear has not demonstrated that the product for which it is requesting an exclusion is sufficiently different from domestically produced like goods to warrant an interim review in order to obtain an exclusion from the finding.

12. The Tribunal is also of the view that the footwear for which the exclusion is requested would compete with domestic production, if present in the Canadian market. In this regard, A.M. Footwear's allegation that its product would command a premium has convinced the Tribunal that, if the exclusion were granted, A.M. Footwear's product would simply vie for the same customers as those that would otherwise purchase footwear from domestic production. Cannibalization of a portion of the domestic industry's market would likely occur. This constitutes a threat of injury to the domestic industry.

CONCLUSION

13. For the foregoing reasons, pursuant to subsections 76.01(3) and 76.01(4) of *SIMA*, the Tribunal is not satisfied that an interim review of the finding is warranted and, consequently, has decided not to conduct an interim review.

Meriel V. M. Bradford

Meriel V. M. Bradford
Presiding Member

Zdenek Kvarda

Zdenek Kvarda
Member

James A. Ogilvy

James A. Ogilvy
Member