

Ottawa, Friday, October 18, 2002

Expiry Review No. RR-2001-005

IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on October 20, 1997, in Review No. RR-97-001, continuing, with amendment, the order made by the Canadian International Trade Tribunal on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82, concerning:

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

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on October 20, 1997, in Review No. RR-97-001, continuing, with amendment, its order made on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82, concerning certain waterproof rubber footwear originating in or exported from the People's Republic of China.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order made in Review No. RR-97-001 concerning the above-mentioned goods.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

James A. Ogilvy
James A. Ogilvy
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Ottawa, Friday, October 18, 2002

Expiry Review No. RR-2001-005

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

Special Import Measures Act – Whether to rescind or continue, with or without amendment, the order made by the Canadian International Trade Tribunal on October 20, 1997, in Review No. RR-97-001.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 10 and 11, 2002
Date of Order and Reasons:	October 18, 2002
Tribunal Members:	Richard Lafontaine, Presiding Member Pierre Gosselin, Member James A. Ogilvy, Member
Director of Research:	Selik K. Shainfarber
Research Manager:	Simon Glance
Economist:	Ihn Ho Uhm
Statistical Officer:	Lise M. Lacombe
Counsel for the Tribunal:	Philippe Cellard Lynne M. Soublière
Registrar Officer:	Karine Turgeon
Participants:	G.P. (Patt) MacPherson Naila Elfar for The Shoe Manufacturers' Association of Canada (Association of Domestic Manufacturers)
Witnesses:	
François Soucy President and Chief Operating Officer Acton International Inc.	Lise Desjardins Vice-President - Marketing Acton International Inc.

Pat Vitulli
Vice-President
Rallye Footwear Inc.

Paul Hubner
President
Baffin Technology

Gordon Cook
President
Genfoot Inc.

Alain Drolet
Vice-President - Marketing
Régence Inc.

Tim Boyce
Seasonal Footwear Buyer
Wal-Mart Canada Inc.

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Ottawa, Friday, October 18, 2002

Expiry Review No. RR-2001-005

IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on October 20, 1997, in Review No. RR-97-001, continuing, with amendment, the order made by the Canadian International Trade Tribunal on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82, concerning:

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

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PIERRE GOSSELIN, Member
JAMES A. OGILVY, Member

STATEMENT OF REASONS

BACKGROUND

This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the order made by the Canadian International Trade Tribunal (the Tribunal) on October 20, 1997, in Review No. RR-97-001, concerning certain waterproof rubber footwear originating in or exported from the People's Republic of China (China).

On December 19, 2001, the Tribunal issued a notice of expiry, pursuant to subsection 76.03(2) of SIMA, informing interested parties that its order made on October 20, 1997, was scheduled to expire on October 21, 2002.²

On February 7, 2002, the Tribunal issued a notice of expiry review pursuant to subsection 76.03(6) of SIMA to all known interested parties. As part of the review, the Tribunal, on behalf of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), sent comprehensive questionnaires to Canadian producers, importers and exporters/foreign producers of waterproof rubber footwear. These questionnaires were developed jointly by the Canada Customs and Revenue Agency (CCRA) and Tribunal staff. On February 8, 2002, the Commissioner initiated his investigation to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping of the subject goods from China. On June 7, 2002, the Commissioner concluded his investigation and determined, pursuant to subsection 76.03(7) of SIMA, that there was a likelihood of continued or resumed dumping of the subject goods if the order were allowed to expire.

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

2. C. Gaz. 2002.I.21.

On June 10, 2002, upon receipt of the Commissioner's determination and the CCRA's administrative record, the Tribunal began its inquiry, pursuant to subsection 76.03(10) of SIMA. As part of its inquiry, public and *in camera* hearings were held in Ottawa, Ontario, on September 10 and 11, 2002.

The Shoe Manufacturers' Association of Canada (SMAC) was represented by counsel, filed evidence and made argument in support of continuing the order, without amendment, on behalf of the domestic industry. Five domestic manufacturers of waterproof rubber footwear, i.e. Acton International Inc. (Acton), Baffin Technology (Baffin), Genfoot Inc. (Genfoot), Rallye Footwear Inc. (Rallye) and Régence Inc. (Régence), filed witness statements and testified at the hearing.³ A Tribunal witness from Wal-Mart Canada Inc. (Wal-Mart) also provided public and *in camera* evidence at the hearing. No exporters or importers chose to participate as parties in the Tribunal's review.

The record of this expiry review consists of the testimony heard during the public and *in camera* hearings, in addition to all relevant documents, including the CCRA's *Protected Expiry Review Report* and *Statement of Reasons*, with supporting documentation, the protected and public replies to the Tribunal's and the CCRA's questionnaires, and the public and protected pre-hearing staff reports for this review, as well as those for the 1997 review. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

PRODUCT

Product Definition and Description

The waterproof rubber footwear under review is constructed wholly or in part of rubber, including thermoplastic rubber (TPR), worn over the foot or shoe, with or without liners, linings, fasteners or safety features. This includes: low rubbers of light or heavy construction which may have such features as nylon vamp, net lining and stretchable rubber; overshoes 6 to 10 in. in height, which may include such design features as zippered fronts, straps, buckles, nylon tops, fleece or net lining; and all-rubber boots worn over the foot and constructed to various heights, such as red sole rubber boots, city boots, rainboots, hunting and fishing boots, and hip and chest waders.

Excluded from the footwear under review are waterproof footwear made of polyvinyl chloride; snowmobile boots; rubber-bottom, leather-top boots; and "safety footwear". The latter is defined as footwear that meets safety standards established by the Canadian Standards Association.

Production Process

Waterproof rubber footwear may be produced by injection moulding alone or in combination with the stitched-product process, or by the traditional lay-up or vulcanization process. The combined moulding-stitching process would produce, for example, a rubber-bottom, nylon-top winter boot.

With the injection-moulding process, a granulated chemical compound of TPR is heated and injected into steel moulds installed in moulding machines. Each mould dictates the size, style and number of colours of a moulded item. When the chemical is forwarded to the moulding machine, it is vacuumed into the hopper

3. A sixth domestic producer that supports SMAC's actions in this review, Chaussures Yeti Inc., did not file a witness statement or participate in the hearing.

and pushed into a heated barrel. A screw inside the barrel generates additional heat to melt the compound and then injects it into a mould. The resulting products consist of an unfinished waterproof bottom or a single-piece (i.e. a combined bottom and upper) waterproof footwear. The moulded items are then cooled, extracted and trimmed. Components and markings are then added before the finished footwear is packed for shipping.

The stitched-product process consists of cutting and sewing uppers of various materials, nylon boot collars, liners and various other components. These pieces are assembled and affixed, as required, to the injected bottoms described earlier. After stitching the uppers to the bases, additional finishing and packing are completed before transfer to shipping.

The lay-up or vulcanization process requires the preparation of a rubber compound that is calendered into sheeting. Footwear parts are then cut from the sheets of rubber, laid up on forms and secured with rubber cement. The laid-up footwear is then vulcanized in an oven so that the rubber is irreversibly cured. This manufacturing process is capable of producing a wide range of rubber footwear, including specialty items, and its use is economically advantageous for short production runs.

The way in which production operations are arranged varies from company to company — from typical assembly-line operations, where each worker performs a specific task, to work modules consisting of a small team working together on a particular product from start to finish.

SUMMARY OF PAST FINDINGS AND ORDERS

In 1979 (Inquiry No. ADT-4-79), the Anti-dumping Tribunal (ADT) found that the dumping of certain waterproof rubber footwear originating in or exported from Czechoslovakia, Poland, the Republic of Korea and Taiwan had caused, was causing and was likely to cause material injury to production in Canada of like goods. In 1982 (Inquiry No. ADT-2-82), the ADT heard a second complaint involving certain waterproof rubber footwear from Hong Kong, Malaysia, Yugoslavia and China, and a threat of injury finding was made with respect to these countries. In 1987, the two findings were reviewed and continued, without amendment, by the Canadian Import Tribunal in Review No. R-7-87 (1987 finding). In 1992, the 1987 finding was reviewed and continued⁴ in Review No. RR-92-001 (1992 order).

The 1992 order was reviewed in 1997 (Review No. RR-97-001). In that review, SMAC, on behalf of the Canadian industry, submitted evidence and made arguments in support of a continuation of the 1992 order against only Malaysia, the Czech Republic, the Slovak Republic, Hong Kong and China.⁵ The Tribunal rescinded the order with respect to those countries for which SMAC did not request the order to be continued, as well as those countries which had exported the subject goods either in low volumes or at low margins of dumping, namely, Hong Kong, Malaysia, the Czech Republic, and the Slovak Republic. However, the Tribunal was of the opinion that the dumping in Canada of waterproof rubber footwear from China was likely to resume and that there was a likelihood of material injury to domestic production of like goods if the order were rescinded with respect to China.⁶ As a result, the only subject country left after 1997 was China.

4. The Tribunal's decision was by majority, with one member dissenting.

5. SMAC did not argue for a continuation of the order in respect of Poland, the Republic of Korea, Taiwan, the Federal Republic of Yugoslavia and the new jurisdictions of the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia and the Republic of Slovenia.

6. Again, the Tribunal's decision was by majority, with one member dissenting.

SMAC'S POSITION

SMAC submitted that the Tribunal's order in Review No. RR-97-001 should be continued, without amendment. SMAC argued that the evidence establishes that the expiry of the order is likely to result in material injury to the domestic industry.

SMAC began its submissions with a brief review of the previous findings and orders and of the evolution of the product and the market in the past 20 years. In its view, even though the anti-dumping protection had been in place for some 20 years, continued protection was more necessary now than ever.

In addressing the expiry review factors enumerated in subsection 37.2(2) of the *Special Import Measures Regulations*,⁷ SMAC stated that, if the order were rescinded, there would likely be a major shift from domestic goods to the subject imports from China within the subsequent 24 months. This shift in production to China would happen as quickly as it did with Sorel brand boots in respect of exports from China to the United States. It recalled the testimony of the witness from Wal-Mart that there would be a major impact on every domestic producer by the fall of 2004. SMAC further submitted that the increase in imports from China would be significant in absolute terms, and also in relative terms because there was little growth in the market for Canadian waterproof rubber footwear.

Regarding the likely prices of the subject goods and their effect on the prices of like goods, SMAC stated that the prices of Chinese goods would fall "overnight" by 36 percent if the order were rescinded. It submitted that, consequently, every domestic producer would suffer price injury in competition with Chinese-made boots, such as the Sorel brand boots, as well as with the whole range of the subject goods, including clogs and "duckies".

With respect to the Chinese industry's likely performance, SMAC stated that China accounts for half of the footwear production in the world and that it is even more dominant today than it was five years ago. SMAC submitted that, if China could increase its market share in the United States from 30 percent in 1992 to 68 percent in 2001 and dominate that market in spite of the 37.5 percent tariff now in place in the United States, China could surely dominate the Canadian market, where the tariff is only 19 percent.

In discussing the indicia of injury to domestic producers, SMAC submitted that, as a result of high volumes of low-priced goods from China if the order were rescinded, every domestic producer would suffer from lower sales, market share, revenues, gross margins, profits, return on investments and cash flow, as well as a diminished ability to raise capital. The industry would be forced to retrench to a smaller base of operations with respect to waterproof rubber footwear. SMAC questioned whether Canadian producers could even remain viable.

ANALYSIS

The Commissioner made a determination, under subsection 76.03(7) of SIMA, that the expiry of the order in respect of the subject goods is likely to result in the continuation or resumption of dumping. When the Commissioner makes such a determination, the Tribunal is responsible, pursuant to subsection 76.03(10) of SIMA, for determining whether the expiry of the order is likely to result in material injury to the domestic industry or retardation. Subsection 37.2(2) of the Regulations enumerates a number of factors that the Tribunal may consider in addressing the question of likelihood of injury. The various factors that the Tribunal

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

considers relevant in this case are set out under the following headings: Likely Volumes of Subject Imports from China; Likely Prices of Waterproof Rubber Footwear; and Likely Effects of Subject Imports on Domestic Industry.

Likely Volumes of Subject Imports from China

Questionnaires were sent to 53 potential Chinese exporters of the subject goods seeking information, among other things, on their plant capacities, production, home market and export sales. In addition, questionnaires were sent to 117 importers of the subject goods requesting information on a range of issues, including the volume and value of imports and sales in Canada. However, no exporter and only two importer responses were received. Accordingly, in evaluating production volumes, production capacity, exports and likely volumes of the subject imports from China, the Tribunal has had to rely largely on information available in trade publications regarding total footwear,⁸ including both subject and non-subject footwear, as well as evidence adduced by the domestic industry.

According to published trade data, China is the dominant world supplier of footwear. Since 1993, China's share of world footwear production has grown from approximately 37 percent to just over 53 percent in 2000, totalling 6.4 billion pairs.⁹ Of this production, China exported 3.9 billion pairs of footwear, which accounted for approximately 53 percent of total world footwear exports.¹⁰ It is evident from these statistics that China has significant capacity to produce footwear for export. Moreover, the Tribunal has found no reason to believe that what is true for footwear in general is not also true for the subject goods.

Indeed, there is clear evidence that, in recent years, China has been able to rapidly expand its share of key foreign markets, such as the European Union and the United States. With regard to the European Union, the evidence indicates that imports of Chinese waterproof rubber footwear face a 17 percent customs tariff. Despite this, overall imports of waterproof rubber footwear from China into the European Union increased at an annual average rate of over 21 percent, from 3.1 million pairs in 1998 to 5.5 million pairs in 2001.¹¹

In the United States, Chinese waterproof footwear¹² faces an MFN tariff rate of 37.5 percent. Despite this tariff, China's share of total waterproof footwear imports into the United States, in value terms, grew from 30 percent in 1992 to 68 percent in 2001.¹³ In 2000 and 2001, the volume of imports of these goods from China grew by 20 percent and 23 percent respectively.¹⁴ In absolute terms, U.S. imports of waterproof footwear from China grew from 4.3 million pairs in 1998 to 6.2 million pairs in 2001.¹⁵

The Tribunal notes that the entire Canadian market for waterproof rubber footwear is roughly the size of the increase in the volume of imports from China into either the European Union or the United States since 1998. It is clear from their growth rate and volumes that Chinese exports of the subject goods have the potential to make significant inroads into the Canadian market if the order is rescinded.

8. *Public Pre-hearing Staff Report, Supplemental Data* (21 August 2002), Tribunal Exhibit RR-2001-005-05A, Administrative Record, Vol. 1A at 80-90.

9. *Ibid.* at 85.

10. *Ibid.* at 89.

11. Manufacturer's Exhibit A-01, para. 13 at 4-5, Administrative Record, Vol. 11.

12. The United States Tariff, under heading No. 64.01, does not distinguish between rubber and plastic waterproof footwear.

13. Manufacturer's Exhibit A-01, para. 17 at 6, Administrative Record, Vol. 11.

14. Manufacturer's Exhibit A-01, para. 16 at 5, Administrative Record, Vol. 11.

15. *Ibid.*

The Tribunal notes that, with the order in place, the subject imports from China have been constrained to relatively low levels, which is to be expected, given an anti-dumping duty that advances the export price by 74 percent. However, the CCRA reported a significant increase in the amount of anti-dumping duties collected on the subject imports from China from 1999 to 2001.¹⁶ Some of this increase may have been due to recently discovered misclassification of the subject imports.¹⁷ It is evident to the Tribunal from the foregoing that, even with the order in place, imports from China have maintained a foothold in the Canadian market.

The rapidity with which the sourcing of the subject goods could be switched to China is illustrated by the sequence of events that followed the bankruptcy of William H. Kaufman Inc. (Kaufman), a major domestic producer of waterproof footwear. As part of the bankruptcy proceedings, in the fall of 2000, a U.S. distributor of clothing and footwear purchased the rights to Kaufman's Sorel brand name. By the fall of 2001, Sorel brand waterproof footwear made in China began appearing in the U.S. market. Identical Sorel brand footwear labelled "made in Macao" or "made in Vietnam" also appeared in Canada at the same time.¹⁸ This underscores the readiness and ability of Chinese manufacturers to supply Canadian demand and to quickly seize new market opportunities, should the order be rescinded.

The Tribunal notes that there is significant retailer concentration in the Canadian market, with a few large retailers accounting for a large proportion of footwear sales, including waterproof rubber footwear. If one of these retailers were to switch some of its requirements for the subject goods to China, it is likely that other retailers, given the degree of competition among mass merchandisers,¹⁹ would at the very least have to consider a similar move. This could lead to significant import volumes. This scenario was substantially confirmed by the witness from Wal-Mart. He testified that, although Wal-Mart currently does not import the subject goods from China because of the anti-dumping duties in place,²⁰ should the order be rescinded, competitive retailing pressures would force Wal-Mart to consider Chinese sources of supply.²¹

In terms of timing, the Tribunal's witness stated that Wal-Mart's purchasing decisions for waterproof footwear have largely been completed for the fall of 2002 and the spring of 2003. Therefore, according to the Tribunal's witness, if the order were rescinded, the first effects on Wal-Mart's purchases would likely be felt in orders for the fall of 2003.²² His testimony suggested that, if the initial orders from China were to go well, it is likely that Wal-Mart would increase its Chinese purchases in 2004. According to the witness, there would be a significant change in the marketplace in 2004,²³ with the domestic industry feeling the full effects of the removal of the order by the fall of that year.²⁴

The Tribunal notes that the industry's own estimates are that, if the order were rescinded, domestic production would be significantly affected by the subject imports from China as early as the spring of 2003,²⁵ somewhat sooner than the estimates provided by the Tribunal's witness. In the Tribunal's view, the estimates

16. Tribunal Exhibit RR-2001-005-03A, Administrative Record, Vol. 1 at 97.

17. The issue of misclassification of the subject goods became apparent with the enforcement of the finding against waterproof plastic footwear from China in Inquiry No. NQ- 2000-004 (8 December 2000) (CITT).

18. Manufacturer's Exhibit A-01, para. 26 at 8, Administrative Record, Vol. 11.

19. *Transcript of Public Hearing*, Vol. 1, 10 September 2002, at 133.

20. *Ibid.* at 120.

21. *Ibid.* at 133.

22. *Transcript of Public Hearing*, Vol. 1, 10 September 2002, at 133-34, 147-48.

23. *Ibid.* at 148.

24. *Ibid.* at 151.

25. Manufacturer's Exhibit A-04, para. 15 at 4, Administrative Record, Vol. 11.

of the domestic industry and the Tribunal's witness, although not in agreement with respect to the precise timing, clearly indicate that, within one to two years of a rescission of the order, the volume of the subject imports from China would likely increase significantly.

Likely Prices of Waterproof Rubber Footwear

The industry contends that the export price of the subject goods from China is extremely low. In support of this contention, a domestic producer provided two examples of the subject goods from China recently sold in Canada. In both examples, the producer took the actual Canadian retail prices for the goods and adjusted them for retail profit margins, customs and anti-dumping duties, exchange rates, freight, etc., to arrive at an estimate of the F.O.B. export price out of China.²⁶ According to the producer, these export prices for finished Chinese goods were about the same as the cost of the raw materials that it would face in producing equivalent boots.²⁷ The producer submitted that it was simply not possible to compete with Chinese goods at these low prices.

In this connection, the Tribunal's witness was given the opportunity to review and comment on the above estimates and found them to be realistic.²⁸ These examples illustrate that, in certain cases, Chinese producers are able to sell their goods at very low prices, overcoming a 74 percent duty, and still be competitive in Canada. The Tribunal notes that the industry also submitted evidence of low prices in the United States for waterproof rubber footwear from China. The industry also contended that, while it had made inroads into certain low-volume, speciality-product segments of the U.S. market,²⁹ it was generally unable to compete in the high-volume market segments against low-priced waterproof footwear imports from China into the United States.³⁰ Moreover, Chinese goods were more competitive in the United States than Canadian goods, despite the advantages offered by a 37.5 percent tariff preference and the Canadian dollar exchange rate. Indeed, to be competitive in the high-volume segment of the market, at least one Canadian producer has made arrangements to supply its U.S. customers with goods manufactured in China.³¹

It is clear to the Tribunal from the foregoing evidence that Chinese producers can be extremely competitive in their pricing for export markets. Indeed, it would appear that they are able to price their goods low enough to overcome obstacles, such as high tariffs and anti-dumping duties. On the basis of the evidence submitted in this case, the Tribunal is persuaded that, if the order were rescinded, Chinese producers would price their goods at levels necessary to capture significant market share in Canada. This would undoubtedly lead to a general decline in market prices given the realities of the retail environment in Canada.³²

Likely Effects of Subject Imports on Domestic Industry

The Tribunal notes that the size of the apparent Canadian market and sales from domestic production for waterproof rubber footwear appear to have grown since the last review in 1997.³³ However, the evidence

26. Manufacturer's Exhibit A-04A, paras. 11, 12 at 3, Administrative Record, Vol. 11.

27. Manufacturer's Exhibit A-04A, para. 12 at 3, Administrative Record, Vol. 11.

28. *Transcript of Public Hearing*, Vol. 1, 10 September 2002, at 145.

29. *Ibid.* at 69; *Transcript of In Camera Hearing*, Vol. 1, 10 September 2002, at 72, 92.

30. *Supra* note 28 at 83.

31. *Transcript of In Camera Hearing*, Vol. 1, 10 September 2002, at 69.

32. *Transcript of Public Hearing*, Vol. 1, 10 September 2002, at 133.

33. *Public Pre-hearing Staff Report* (5 September 2002), Tribunal Exhibit RR-2001-005-05B, Administrative Record, Vol. 1A at 102; *Public Pre-hearing Staff Report* (23 June 1997), Tribunal Exhibit RR-2001-005-08C, Administrative Record, Vol. 1.1 at 185.

before the Tribunal suggests that this is less a reflection of growing demand for waterproof footwear as a category than a shift within the category from waterproof plastic footwear to waterproof rubber footwear.³⁴ This shift reverses a trend that existed in the 1990s towards waterproof plastic footwear.³⁵

The Tribunal also notes that all the industry witnesses who testified at the hearing reported experiencing some positive effect from the shift back to rubber from plastic. However, overall, they detected little or no significant growth trends in the waterproof rubber footwear market.³⁶ The Tribunal's witness also reported only modest growth over the past few years.³⁷ According to the evidence, another factor relevant to the near-term market outlook is the recent mild Canadian winters, which have slowed sales and created an inventory backlog that will likely hamper industry production and sales going forward.³⁸

On the basis of the evidence submitted, the Tribunal finds that, while the market for waterproof rubber footwear in Canada may fluctuate from year to year based on seasonal factors and other short-term considerations, it is basically stable, with a relatively low growth outlook. Given this relatively stable market, the inventory overhang occasioned by mild winters and the large market share currently held by the domestic industry,³⁹ it is likely that any significant sales and market share gains by China will come at the expense of the domestic industry. In other words, if the order is rescinded, it is likely that the domestic industry will lose substantial sales volumes, revenues and market share as a result of the likely large influx of low-priced subject goods from China.

34. Some of the statistical data available to the Tribunal show a growth rate in the waterproof rubber footwear market that cannot be accounted for by the shift from plastic to rubber. However, at least some of the higher growth rate may be the result of statistical reporting errors by the industry itself at the time of the 1997 review, in particular, by the now defunct Kaufman.

35. *Transcript of Public Argument*, Vol. 1, 11 September 2002, at 7-8.

36. *Supra* note 32 at 78-80, 93; *Ibid.* at 11.

37. *Supra* note 32 at 152-53.

38. *Supra* note 32 at 81-82, 152.

39. *Public Pre-hearing Staff Report* (18 July 2002), Tribunal Exhibit RR-2001-005-05B, Administrative Record, Vol. 1A at 102.

The Tribunal notes that there are also certain production imperatives that come into play in evaluating the likely effects on the industry of rescinding the order. In this regard, the evidence shows that Chinese products are particularly competitive in the high-volume, mass-market segment of the market.⁴⁰ The evidence suggests that it is in this segment of the market that the effects of rescinding the order would likely first be felt by the domestic industry,⁴¹ especially in light of the intense competitive pressures among mass merchants that have already been noted. If the industry were to lose a substantial share of this high-volume business, the loss would have a significant effect on its production economics for all market segments, including the lower-volume higher-margin products where it is generally more competitive in Canada and in export markets.⁴² According to the industry, without economies of scale, it would not be viable in Canada or elsewhere.⁴³ On the basis of the evidence before it, the Tribunal has no reason to doubt these claims.

The Tribunal notes that, over the past three years, under the protection of the order, the industry as a whole has seen some improvements in certain areas such as production, sales, market share and prices.⁴⁴ However, overall, the industry's aggregate financial performance has been poor, as it has incurred losses in net income in two of the three years in the period under review.⁴⁵ It is evident to the Tribunal that, while the industry as a whole has derived benefits from anti-dumping protection and continues to invest to enhance its competitiveness in the future, it remains weak. This weakness is underscored when the performance of certain domestic producers is individually examined.⁴⁶ In light of this weakness, the Tribunal is of the view that the domestic industry lacks the necessary resources to avoid the materially injurious effects of the high volumes and low prices of Chinese goods that are likely to enter the Canadian market if the order is rescinded.

CONCLUSION

The Tribunal finds that, in the absence of the order, the subject goods from China are likely to enter Canada in large volumes and at low prices. Given the prevailing and expected market conditions and the state of the industry, this is likely to materially injure domestic producers. Accordingly, the Tribunal concludes that the expiry of the order is likely to result in material injury to the domestic industry.

40. *Transcript of Public Hearing*, Vol. 1, 10 September 2002, at 83.

41. Manufacturer's Exhibit A-04, para. 9 at 2, Administrative Record, Vol. 11.

42. *Ibid.*

43. *Supra* note 41; *Transcript of In Camera Hearing*, Vol. 1, 10 September 2002, at 8, 30-34; *Supra* note 40 at 110.

44. *Public Pre-hearing Staff Report* (18 July 2002), Tribunal Exhibit RR-2001-005-05B, Administrative Record, Vol. 1A at 102.

45. *Ibid.*

46. *Protected Pre-hearing Staff Report*, revised (5 September 2002, Tribunal Exhibit RR-2001-005-06 (protected), Administrative Record, Vol. 2A at 34-39, 43-49; *Protected Pre-hearing Staff Report*, revised (5 September 2002), Tribunal Exhibit RR-2001-005-06A (protected), Administrative Record, Vol. 2A at 88-89.

Pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal hereby continues its order made in Review No. RR-97-001 concerning certain waterproof rubber footwear originating in or exported from China.

Richard Lafontaine

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Presiding Member

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