CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, March 8, 1994

Request for Review No.: RD-93-004

IN THE MATTER OF a request for review, under subsection 76(2) of the *Special Import Measures Act*, of the finding issued by the Canadian International Trade Tribunal on May 3, 1990, in Inquiry No. NQ-89-003;

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.

ORDER

The Tribunal hereby concludes, under subsection 76(3.1) of the *Special Import Measures Act*, that, on the basis of the information filed by the applicant, a review is not warranted.

Lise Bergeron
Lise Bergeron
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

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Request for Review No.: RD-93-004

Date of Order and Reasons:	*March 8, 1994*
Tribunal Members:	*Lise Bergeron, Presiding Member* *Anthony T. Eyton, Member* *Michèle Blouin, Member*
Director of Research:	*Réal Roy*
Counsel for the Tribunal:	*Shelley Rowe*

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Ottawa, Tuesday, March 8, 1994

Request for Review No.: RD-93-004

IN THE MATTER OF a request for review, under subsection 76(2) of the *Special Import Measures Act*, of the finding issued by the Canadian International Trade Tribunal on May 3, 1990, in Inquiry No. NQ-89-003, concerning:

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

TRIBUNAL: LISE BERGERON, Presiding Member
ANTHONY T. EYTON, Member
MICHÈLE BLOUIN, Member

STATEMENT OF REASONS

BACKGROUND

On May 3, 1990, the Canadian International Trade Tribunal (the Tribunal) found that: (1) 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 in or exported from the People's Republic of China and Taiwan, and the subsidizing of women's leather boots from Brazil had caused, were causing and were likely to cause material injury to the production in Canada of like goods; and (2) 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 had caused, were causing and were likely to cause material injury to the production in Canada of like goods. The aforementioned finding did 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.

Mr. Michael Wagen of Delmar International Inc. (the applicant) requested, in a letter dated September 9, 1993, that the Tribunal review the above-mentioned finding under section 76 of the *Special Import Measures Act*[1] (SIMA), insofar as it applies to "sports footwear."

1. R.S.C. 1985, c. S-15.

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Under subrule 70(2) of the *Canadian International Trade Tribunal Rules*,[2] by letter dated November 19, 1993, the Tribunal informed all parties to the inquiry of its receipt of the request and afforded them an opportunity to make representations concerning the request. The Tribunal received submissions from counsel for The Shoe Manufacturers' Association of Canada (SMAC), the complainant in the inquiry; the Canadian Shoe Retailers' Association, a committee within the Retail Council of Canada representing footwear departments (the footwear committee); and the Canadian Association of Footwear Importers Inc. (CAFI), a subcommittee within the Canadian Importers Association Inc.

APPLICANT'S SUBMISSION

The applicant requested a review on behalf of Adidas Canada Ltd., The Indeka Group, Nike Canada Ltd., RMP Athletic Locker Ltd., Reebok Canada Inc. and Wolverine Canada Inc. All of these firms are importers of branded performance sports footwear. These footwear are designed with specialized features, thereby making them particularly suitable for specific sports such as basketball, volleyball, squash, handball, cross training and aerobics. The applicant claimed that the branded performance sports footwear are not produced in Canada and were excluded from the scope of the finding.

The applicant argued that, in late 1992, following the Tribunal's decision in *J.V. Marketing Inc. v. The Deputy Minister of National Revenue for Customs and Excise*,[3] under section 61 of SIMA involving fitness walking shoes, the Department of National Revenue (Revenue Canada) began to apply anti-dumping duties on branded performance sports footwear imported by the applicant's clients if the footwear were not marketed as performance running, jogging or tennis shoes.

The applicant submitted that the Tribunal should review its finding in *Women's Leather Boots and Shoes* for the express purpose of expanding the scope of the exclusion of sports footwear to include branded performance sports footwear. It was further submitted that the branded performance sports footwear could be effectively removed from the scope of the finding by expanding the definition of sports footwear so as to include branded performance sports footwear when purchased at an F.O.B. price which exceeds a specific level. This, it was claimed, would ensure that branded performance sports footwear, which are distinguished from "casual shoes," are clearly and unquestionably excluded from the Tribunal's finding.

COMPLAINANT'S SUBMISSION

SMAC asked the Tribunal not to initiate a review of the finding at this time. It pointed out, *inter alia*, that: (1) when SMAC, on its own initiative, listed "sports footwear" in its complaint as one of six classes of footwear that should be excluded, its objective was to exclude from the complaint the goods described as "sports footwear" in

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2. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

3. Appeal No. AP-91-188, September 1, 1992. The issue in that appeal was whether certain women's shoes imported into Canada from Taiwan were goods of the same description as those to which the Tribunal's finding applied. Counsel for J.V. Marketing Inc. claimed that the shoes were excluded from the finding as sports footwear. The appeal was dismissed.

the Harmonized Commodity Description and Coding System;[4] (2) there have been no changes in circumstances (such as the closing of Canadian production) which would warrant the initiation of a review in respect of a subclass of the branded performance sports footwear at this time; (3) any dispute in respect of the definition of the branded performance sports footwear is a matter to be resolved between importers and Revenue Canada, and it would be an abuse of the injury review process to use it to resolve disagreements over classifications which the Tribunal did not create; and (4) the finding will need to be reviewed in its entirety within the next 17 months, and a review covering only part of an injury finding would subject SMAC, and possibly other interested parties, to a duplication of effort and expense. SMAC urged the Tribunal not to initiate a review at this time and to await the normal scheduling of a comprehensive review before the expiration of five years after the finding.

IMPORTERS' SUBMISSIONS

In its submission, the footwear committee stated that footwear retailers are not content with the narrow interpretation being taken by Revenue Canada on the sports footwear exclusion and that they do not believe that it is consistent with the intentions of the parties at the 1990 inquiry or with the finding made by the Tribunal. However, footwear retailers do not support the request for review insofar as it tries to address this issue on the basis of price point or performance. Furthermore, the footwear committee was concerned that a review at this time may prejudice the interest of its members by extending the application of the whole finding a further five years from the date of the review determination and that a review at this time would be difficult because footwear retailers have not been anticipating responding to a review until 1995. The footwear committee suggested that the issue of the sports footwear exclusion be deferred until the full review contemplated for 1995.

Finally, in its submission opposing a review of the finding, CAFI stated that, while the membership of the association supports the applicant's initiative and further believes that the exclusion of sports footwear from the finding must not be limited to high-performance sports footwear, a review of sports footwear only, at this time, would jeopardize the review of the entire finding scheduled for 1995.

REASONS FOR DECISION

The basis on which the applicant has requested a review is to seek clarification of Revenue Canada's interpretation of the term "sports footwear" in the Tribunal's finding respecting *Women's Leather Boots and Shoes*. That finding does not include the following:

> *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.*

The statement of reasons in *Women's Leather Boots and Shoes* provided, on page 4, the following description of the term "sports footwear:"

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4. Customs Co-operation Council, 1st ed., Brussels, 1987.

> *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.*

In the Tribunal's view, the question that the applicant has asked the Tribunal to review is not a question relating to the Tribunal's injury finding, but a question of the interpretation by Revenue Canada of the term "sports footwear" in the exclusion from the Tribunal's finding.

In a recent order, *Bicycles, Assembled or Unassembled, with Wheel Diameters of 16 Inches (40.64 cm) and Greater, and Frames Thereof, Originating in or Exported from Taiwan and the People's Republic of China*,[5] the Tribunal expressed its view on the purpose of SIMA as it relates to reviews of current findings and on the conditions for the initiation of such reviews:

> *Subsection 76(3) of SIMA provides that the Tribunal shall only review a finding at the request of any person or government if that person or government requesting the review satisfies the Tribunal that such a review is warranted. Therefore, the information provided by that person or government has to be of a nature sufficient to meet this preliminary condition imposed by statute. The Tribunal must be satisfied, on the basis of the facts presented to it by the parties interested in the review, that a review is warranted.*
>
> *The purpose of a review pursuant to section 76 of SIMA is to reexamine an existing finding of injury to Canadian production in order to determine whether there exist grounds for continuing, altering or rescinding the finding. These grounds would exist, for instance, if the conditions which gave rise to the original injury had changed materially so that the finding was no longer appropriate in part or in whole. Information relevant to such a review might include changes in the structure of the subject industry, financial circumstances, marketing or consumption patterns. In the absence of at least a reasonable indication of such changes in circumstances, however, there is little useful purpose in conducting a review.*[6]

As set out in the *Bicycles* order, the Tribunal stated that it could initiate a review if it was convinced that circumstances had changed materially within the industry to affect the basis on which the finding in *Women's Leather Boots and Shoes* was made, thus justifying revisiting at least part of the finding.

In its request for review, the applicant has not set out any grounds for establishing that circumstances have changed since the time of the finding which would affect the basis on which it was made. For example, the applicant is not arguing that the

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5. Canadian International Trade Tribunal, Request for Review No. RD-93-001, September 17, 1993.
6. *Ibid.* at 2-3.

domestic industry stopped producing the branded performance sports footwear because, to its knowledge, they have never been produced in Canada.

In the Tribunal's view, the proper course of action for the applicant would be to bring an appeal under subsection 61(1) of SIMA. Several appeals have been brought to the Tribunal under subsection 61(1) of SIMA since the finding in *Women's Leather Boots and Shoes* was made, challenging interpretation of the term "sports footwear" and the word "sandals" made by the Deputy Minister of National Revenue for Customs and Excise. Those cases include *J.V. Marketing Inc. v. The Deputy Minister of National Revenue for Customs and Excise*,[7] *M & M Trading Inc. v. The Deputy Minister of National Revenue for Customs and Excise*,[8] *Aldo Shoes Inc. v. The Deputy Minister of National Revenue for Customs and Excise*[9] and, most recently, *APR Imports Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.[10] In the latter case, the Tribunal stated:

> *In the Tribunal's view, "sports footwear" is a broad description and may include any footwear that are designed, manufactured, marketed or used for sports.*[11]

On the basis of the information filed by the applicant, the Tribunal is not satisfied that a review is warranted and hereby makes an order to that effect under subsection 76(3.1) of SIMA.

Lise Bergeron
Lise Bergeron
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Michèle Blouin
Michèle Blouin
Member

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7. *Supra*, note 3.
8. Appeal Nos. AP-92-045 and AP-92-075, September 9, 1993.
9. Appeal No. AP-93-010, January 20, 1994.
10. Appeal No. AP-93-141, February 28, 1994. In that appeal, the Tribunal found that footwear described as ladies' court shoes and designed for the purpose of jogging, running and playing tennis and badminton were "sports footwear" and were, therefore, excluded from the finding in *Women's Leather Boots and Shoes*.
11. *Ibid.* at 3.