



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2004-008

Waterproof Footwear and Bottoms

*Order and reasons issued
Wednesday, December 7, 2005*

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, 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 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 finding made on December 8, 2000, in Inquiry No. NQ-2000-004, concerning waterproof footwear and bottoms of plastic or rubber, including moulded clogs, originating in or exported from the People's Republic of China, excluding ski boots, skating boots and all footwear subject to the order made by the Canadian International Trade Tribunal in Review No. RR-97-001.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of the above-mentioned products originating in or exported from the People's Republic of China.

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Patricia M. Close
Presiding Member

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Pierre Gosselin
Member

Zdenek Kvarda
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Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 19 and 20, 2005

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STATEMENT OF REASONS

BACKGROUND

1. This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the finding made by the Canadian International Trade Tribunal (the Tribunal) on December 8, 2000, in Inquiry No. NQ-2000-004, concerning waterproof footwear and bottoms of plastic or rubber, including moulded clogs, originating in or exported from the People's Republic of China (China), excluding ski boots, skating boots and all footwear subject to the order made by the Tribunal in Review No. RR-97-001 (the subject goods).
2. On February 1, 2005, the Tribunal issued a notice of expiry, pursuant to subsection 76.03(2) of *SIMA*, informing interested parties that its finding made on December 8, 2000, was scheduled to expire on December 7, 2005.
3. On March 23, 2005, the Tribunal decided to initiate an expiry review and issued a notice of expiry review to all interested parties. As part of these proceedings, the Tribunal and the Canada Border Services Agency (CBSA) sent questionnaires to Canadian producers, importers and exporters/foreign producers of waterproof footwear and bottoms. These questionnaires and the replies thereto formed part of the expiry review records of both the Tribunal and the CBSA.
4. On March 24, 2005, the CBSA initiated an expiry review to determine whether the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.
5. On July 21, 2005, the CBSA determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.
6. On July 22, 2005, following the CBSA's determination, the Tribunal continued its review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding was likely to result in injury or retardation.
7. The record of these proceedings includes the following: all relevant documents from the CBSA, including its protected expiry review report, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; the Tribunal's public and protected pre-hearing staff reports; requests for information and parties' replies provided in accordance with the Tribunal's directions; witness statements and exhibits filed by the parties in this expiry review; the transcript of the hearing; and the finding, statement of reasons and the public and protected pre-hearing staff reports issued in Inquiry No. NQ-2000-004. 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 protected information.
8. Rallye Footwear Inc. (Rallye) and The Shoe Manufacturers' Association of Canada (SMAC), on behalf of its members, Genfoot Inc. (Genfoot), Baffin Inc. (Baffin), Hichaud Inc. (Hichaud), Chaussures Yeti Inc. (Yeti) and AirBoss-Defense (AirBoss), were represented at the hearing by counsel. Rallye, Genfoot, Baffin and Hichaud each provided witnesses to support their submissions. They submitted evidence and made arguments in support of a continuation of the finding.

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

9. The Tribunal invited witnesses from Wal-Mart Canada Corp. (Wal-Mart) and Sears Canada Inc. (Sears) to testify at the hearing.

PRODUCT

Product Definition and Description

10. For the purpose of this expiry review, the subject goods are defined as: waterproof footwear and bottoms of plastic or rubber, including moulded clogs, originating in or exported from China, excluding ski boots, skating boots and all footwear subject to the order made by the Tribunal in Review No. RR-97-001.² The following goods are excluded from the product definition:

- fully waterproof polyvinyl chloride (PVC) injection-moulded footwear consisting of a one-piece construction where the entire surface, other than the sole portion, is coated with an adhesive and flocked with small particles of suede, suede dust or suede powder, whether or not trimmed with other materials and however fastened; and
- women's waterproof footwear consisting of a PVC or polyurethane injection-moulded sole of non-boat-like construction and a polyurethane or nylon upper that is treated and affixed to the sole in a manner that makes the boot fully waterproof, whether or not trimmed with other materials and however fastened.

Additional Product Information

11. The distinctive feature of waterproof footwear is that both the sole portion and a portion of the upper, sufficient to give waterproof protection to the foot, are incorporated in a single component. Styles include footwear manufactured for men, women, youth, misses and children.

12. The subject goods principally consist of waterproof plastic footwear. The term "plastic" includes PVC and other plastics made from plastic resins by injection moulding or other processes. The external surface of the footwear may be made entirely of plastic, as in the case of rainboots, hunting and fishing boots and moulded clogs. In other styles, such as duck shoes, winter boots and snowmobile boots, a boat-like waterproof bottom may have trimmings, attachments, liners, cuffs or tops (uppers) of nylon or other materials. Waterproof plastic safety footwear is also included in the definition of the subject goods.

13. Additionally, the subject goods include certain styles of waterproof rubber footwear. The term "rubber" refers to natural and synthetic rubber, including thermoplastic rubber (TPR). Specifically, rubber-bottomed footwear with leather uppers, waterproof rubber riding boots, waterproof rubber safety footwear, rubber moulded clogs and rubber snowmobile boots are subject to this review. However, waterproof winter footwear consisting of rubber bottoms and nylon uppers are not covered by this review.

14. Waterproof bottoms of plastic or rubber are also subject to this review. Waterproof bottoms are normally boat-like components intended for incorporation in finished waterproof footwear.

2. *Waterproof Rubber Footwear* (20 October 1997) (CITT). Footwear subject to that order included: (1) low rubbers of light or heavy construction having features such as nylon vamp, net lining and stretchable rubber; (2) overshoes (6-10 inches in height) having design features such as zippered fronts, straps, buckles, nylon tops, fleece or net lining; and (3) all-rubber boots worn over the foot and constructed to various heights (12-15 inches in height being the most popular), including red sole rubber boots, city boots, rainboots, riding boots, hunting and fishing boots, and hip and chest waders.

Production Process

15. Waterproof bottoms are produced using the injection moulding process. Waterproof footwear may be produced using the injection moulding process alone or in combination with a stitched product process. An example of a product made solely by injection moulding is a PVC rainboot. The combination of injection moulding and stitching would produce, for example, a rubber-bottom, leather-top winter boot.

16. With the injection moulding process, a granulated chemical compound of either PVC or 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 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 single-piece (i.e. a combined bottom and upper) waterproof footwear. The moulded items are then cooled, extracted and trimmed. In the case of single-piece waterproof footwear, components and markings are added before finished footwear is packed for shipping.

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

DOMESTIC PRODUCERS

18. During the period of review, from January 1, 2002, to June 30, 2005, the following six firms were identified as domestic producers of waterproof footwear and bottoms: AirBoss, Acton Vale, Quebec; Baffin, Stoney Creek, Ontario; Genfoot, Montréal, Quebec; Hichaud, Québec, Quebec; Rallye, Ville D'Anjou, Quebec; and Chaussures Régence Inc. (Régence), Charlesbourg, Quebec. A seventh firm, Yeti, Montréal, Quebec, indicated to the Tribunal that the vast majority of its sales were non-subject goods.³ Consequently, its data were not taken into account by the Tribunal.

19. Neither AirBoss nor Régence fully participated in the expiry review. However, by way of a Tribunal request for information, estimates of their respective volumes and values of domestic sales were provided for calendar years 2002, 2003 and 2004.⁴ Régence has decided to cease production of footwear, both like goods and leather footwear, in Canada at the end of 2005.⁵ In 2004, AirBoss sold its entire commercial line, except for firefighter boots and, due to inaccurate and incomplete historical data pertaining to the firefighter line, it was unable to provide the relevant financial information that the Tribunal required.⁶

20. During the period of review, Genfoot and Rallye were by far the largest producers of like goods in Canada, followed by Baffin, Régence, AirBoss and Hichaud.

Genfoot

21. Genfoot manufactures both TPR and PVC boots and bottoms for men, women and children at its Montréal plant with felt linings produced at its sister company in New Hamburg, Ontario, where the

3. Tribunal Exhibit RR-2004-008-14.04E (protected), Administrative Record, Vol. 4A at 338.

4. Tribunal Exhibit RR-2004-008-14.02J (protected), Administrative Record, Vol. 4 at 408; Tribunal Exhibit RR-2004-008-14.02L (protected), Administrative Record, Vol. 4 at 414.

5. Tribunal Exhibit RR-2004-008-13.05C, Administrative Record, Vol. 3C at 107.

6. Tribunal Exhibit RR-2004-008-13.06, Administrative Record, Vol. 3C at 112-13.

majority of the stitching and assembly of winter waterproof footwear takes place. It also has an injection moulding and sewing facility in New Hampshire, which produces PVC and TPR boots, as well as assembled nylon and leather winter boots, for the U.S. market. Genfoot supplies this plant with bottoms and felt linings produced in Canada. In 2004, it closed a rubber footwear sewing and assembly plant in Contrecoeur, Québec.⁷ Genfoot's products are sold under the Kamik[®] brand.

Rallye

22. Rallye is a manufacturer of both TPR and PVC bottoms, which it attaches to a variety of imported uppers of nylon and leather from China⁸ to produce winter waterproof footwear. It also produces rainboots, red sole boots, hunting boots, CSA approved safety footwear, as well as sandals and fashion boots for women. Rallye does not have its own brand. Rather, it sells to retailers that then offer Rallye's products under their own house labels.⁹

Baffin

23. Baffin is a manufacturer of industrial and outdoor footwear. It produces moulded waterproof footwear using either TPR or PVC compounds. It also produces stitched waterproof footwear with a base of either TPR or PVC and an upper of either nylon or leather (i.e. winter boots, snowmobile boots). Baffin's products are sold through various retailers and wholesalers across Canada and under the Baffin brand.¹⁰

Hichaud

24. Hichaud, a non-profit organization, is predominantly a manufacturer of snowmobile-style winter boots for men, women and children. It imports some of its bottoms, with China being the source of supply in 2004.¹¹ Hichaud performs the cutting and stitching of uppers at its Quebec City, Quebec, plant.¹²

IMPORTERS AND EXPORTERS

25. The Tribunal sent expiry review questionnaires to 159 importers and 126 exporters. Only 9 importers provided responses.¹³ Tribunal staff also sent supplementary questionnaires to 4 importers to confirm their Statistics Canada import data. Three responses were received.

PRODUCT DISTRIBUTION AND MARKETING

Domestic Product

26. Domestically produced waterproof footwear is sold directly to major national retail chains, mass merchandisers, retail shoe chains and independent shoe chains. Domestic producers attend national and international footwear shows to get exposure, to promote and sell their product, and to see new fashion trends.

7. Manufacturer's Exhibit A-04, at 1-3, Administrative Record, Vol. 11.

8. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 76.

9. Manufacturer's Exhibit B-02, paras. 9, 11, Administrative Record, Vol. 11.

10. Manufacturer's Exhibit A-06 paras. 1-7, Administrative Record, Vol. 11.

11. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 58-59.

12. Tribunal Exhibit RR-2004-008-13.07, Administrative Record, Vol. 3C at 121-22.

13. None of these responses could be used because the data were either inconsistent or incomplete.

27. Domestic manufacturers generally use the bottoms that they produce as inputs for their own waterproof footwear and do not sell bottoms to other manufacturers. However, certain domestic manufacturers do import bottoms from China and the Republic of Korea (Korea).¹⁴

SUMMARY OF PAST PROCEEDINGS

28. Imports of waterproof footwear and bottoms from China have been subject to anti-dumping measures in Canada since December 8, 2000. Following is a summary of the Tribunal's initial finding, as well as other findings and orders pertaining to similar waterproof footwear.

Summary of the Finding Made in Inquiry No. NQ-2000-004

29. That inquiry involved dumped imports from China. The domestic industry consisted of 10 known producers,¹⁵ 5 of which were members of SMAC and accounted for about 99 percent of the total domestic production of waterproof footwear and bottoms. It should be noted that a major Canadian producer, Kaufman Footwear (Kaufman), had declared bankruptcy soon after the preliminary determination. Several importers, as well as the Retail Council of Canada, participated in the inquiry.

30. Although dumped imports from China had increased substantially, albeit from low levels, in the period leading up to the preliminary determination, the Tribunal was not convinced that they had caused injury to the domestic industry. A decline in the market for waterproof footwear, as a result of warmer climatic conditions, had had a significant negative effect on the domestic industry's performance. Milder weather also had led to a shift in demand towards lighter boots, while the focus of the industry's production had been on the more traditional type of winter boots. Approximately two thirds of the subject imports consisted of flocked waterproof footwear, a product that satisfied consumer demand for lighter-weight waterproof footwear with a fashion flair. Another product that was imported from China was women's fully waterproof nylon boots with non-boat-like construction bottoms that also met similar consumer demands. There were no comparable products manufactured by the domestic industry.

31. However, the Tribunal considered that the acquisition of the Sorel brand name by Columbia Sportswear Company (Columbia), from Kaufman, could have serious consequences for the domestic industry. In fact, the evidence disclosed a real possibility that Columbia could supply the Canadian market with Sorel footwear produced in China and offered in Canada at dumped prices. This could have quickly destabilize prices in the traditional Canadian winter boot market, which had been the mainstay of the Canadian industry. This, together with China's huge production capacity, strong export orientation and history of dumping, led the Tribunal to conclude that the domestic industry faced a threat of material injury from dumped imports from China.

32. The Tribunal excluded from its finding flocked waterproof footwear and women's fully waterproof nylon boots with non-boat-like construction bottoms.

Summary of the Finding Made in Inquiry No. NQ-2002-002

33. That inquiry concerned dumped imports of waterproof rubber and plastic footwear and waterproof footwear bottoms from Hong Kong, China (Hong Kong); Macao, China (Macao); and Vietnam. The

14. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 59-60.

15. Acton International Inc. (Acton), Baffin, Genfoot, Régence, Rallye, Alliance Mercantile, Hichaud, Les Entreprises J. E. Goulet Enrg., Chaussures Vercorp Inc. and Viberg Boot Manufacturing Ltd.

domestic industry consisted of six producers,¹⁶ represented by SMAC, which accounted for more than 95 percent of the total domestic production.

34. The Tribunal terminated its inquiry with respect to Hong Kong because there were negligible volumes of imports.

35. With respect to imports from Macao and Vietnam, the Tribunal found that they had quickly captured a significant percentage of the Canadian market. However, it also found that those imports, which were largely Sorel waterproof rubber footwear, had entered the market in response to pent-up demand for Sorel footwear. Despite the rise in imports, their market share was considerably less than the market share formerly held by Kaufman. With respect to the effect of dumped prices, the Tribunal was not persuaded that the pricing of the Sorel brand, a premium product, was disruptive to domestic pricing. As to the impact of the subject imports on the domestic industry, the evidence demonstrated that virtually all the industry's key performance indicators had improved in 2000 and 2001. In the Tribunal's view, imports of the subject goods had not caused injury to the domestic industry.

36. Turning to the question of threat of injury, the Tribunal found that there was only one importer of the Sorel brand and that this importer had demonstrated a responsible approach in selling the subject goods in Canada, with modest growth in sales and an intention to continue to focus on a premium pricing strategy. It also noted the testimony of the Vietnamese footwear industry that production capacity for the subject goods was limited. In the Tribunal's view, nothing in the evidence suggested a threat of injury to domestic production from the subject goods imported from Macao and Vietnam.

Summary of the Order Made in Review No. RR-2001-005

37. On October 18, 2002, the Tribunal continued its order in Review No. RR-97-001¹⁷ respecting the dumping of certain waterproof *rubber* footwear originating in or exported from China. It found that, in the absence of the order, the subject goods from China were likely to enter Canada in large volumes and at low prices. Moreover, given the prevailing and expected market conditions and the state of the industry, this was likely to materially injure domestic producers. Accordingly, the Tribunal concluded that the expiry of the order was likely to result in material injury to the domestic industry.

POSITIONS OF THE PARTIES

Position of the Participating Domestic Producers

38. The participating domestic producers argued that the expiry of the finding is likely to result in injury and that the finding should therefore be continued.

39. The participating domestic producers submitted that the likely volume of imports of the subject goods will increase if the finding is not continued. They represented that, during the period of review, in the face of a 49 percent duty, imports of the subject goods increased over 90 percent while the Canadian market for like goods remained stable or only slightly increased between 2002 and 2004. China, it was contended, has a significant and rapidly expanding production capacity, is heavily export-dependent and has a growing

16. Acton, Baffin, Yeti, Genfoot, Régence and Rallye.

17. In Review No. RR-97-001, the Tribunal rescinded the order in respect of footwear from the Czech Republic, the Slovak Republic, Poland, Korea, Taiwan, Malaysia, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia, the Federal Republic of Yugoslavia and Hong Kong.

share of global shoe production. They represented that Chinese exports to the United States account for 83.5 percent of all U.S. footwear imports and that Chinese exports to the United States increased by 10.6 percent in 2004. The domestic producers also argued that Chinese exporters had, in some cases, circumvented the imposition of duties on exports by having goods labelled as originating in another country or making superficial changes to the goods.

40. With respect to the likely prices of the subject goods and their effect on the prices of like goods, the participating domestic producers argued that prices would decline significantly if the finding were not continued due to: (i) price competition between producers of the subject goods in China and like goods in Canada; and (ii) price competition among retailers in the Canadian market to obtain the lowest-cost sources of supply. It was submitted that, at present, even with anti-dumping duties, the Chinese export price of the subject goods is either essentially the same as the selling price offered by the Canadian producers for like goods or slightly higher. The Chinese goods are of the same or better quality. If anti-dumping duties are removed, the price of the Chinese goods, it was argued, will be dramatically lower than the price being offered by the Canadian producers, resulting in a clear and dramatic decrease in sales of like goods by the Canadian producers. The participating domestic producers expect high-quality branded subject goods currently produced at a higher price in Macao to shift to China if the finding is not continued.

41. The participating domestic producers argued that the domestic industry is in a very vulnerable position. Imports, it was submitted, have taken significant sales volume and market share from the domestic producers, while pressuring pricing and gross margins downwards. They claimed that the domestic industry has experienced declining performance in recent years, as indicated by the fact that numerous footwear manufacturers have significantly reduced their operations or ceased production entirely. As a result, production capacity and employment levels declined substantially during the period of review. The domestic producers further contended that their export sales to the United States have also fallen due to the penetration of imports from China into the U.S. footwear market and unfavourable shifts in the Canada-United States exchange rate that advantage imports from China, as the Chinese currency is pegged to the U.S. dollar.

42. As an example of the industry's vulnerability, the participating domestic producers cited Genfoot's closing of its Contrecoeur plant because of the domestic industry's failure to obtain anti-dumping protection from the subject goods exported from Macao.

43. The domestic producers submitted that, during the past five years, China's capacity, its technology and its market penetration globally across all categories of footwear increased substantially. It was represented that China has expanded the types of footwear produced; Chinese producers now produce not only low-quality, light, fashion-oriented waterproof footwear but also high-quality and branded warm-lined footwear.

44. The domestic producers submitted that, in the U.S. market, where no anti-dumping duties are in place, the U.S. domestic industry has disappeared as a result of the impact of imports from China. Producers in Canada, they argued, would cease production in Canada, as has occurred in other categories of footwear. The domestic producers indicated that domestic production of children's' PVC rainboots were particularly vulnerable to imports from China.

45. The domestic producers argued that neither climatic changes nor changes in fashion trends, such as the appearance of cement-constructed boots and moon boots, have negatively affected the overall domestic market for the subject goods.

46. The domestic producers submitted that the Tribunal should consider the evidence of the imposition of anti-dumping or countervailing measures against Chinese producers of the subject and similar goods by authorities in Mexico, Peru, India and Venezuela. Further, it was suggested that the Tribunal should take into account the European Union's recently commenced anti-dumping proceedings in response to the significant increase in imports of low-priced footwear from China (and other countries) into the European Union.

47. The domestic producers further argued that the Tribunal should draw a negative inference from the lack of cooperation or participation by importers and Chinese exporters of the subject goods in either the CBSA's or the Tribunal's proceedings, as it demonstrated a refusal to conduct undumped trade in the subject goods.

Positions of Importers and Others

48. No importers or Chinese exporters of the subject goods participated in the expiry review. On September 21, 2005, counsel for the Canadian Association of Importers and Exporters Inc. (CAIE) advised the Tribunal that the CAIE was withdrawing and ceasing any further participation in the expiry review proceedings.

ANALYSIS

49. Following the CBSA's determination that the expiry of the finding in respect of the subject goods is likely to result in the continuation or resumption of dumping, the Tribunal is required, pursuant to subsection 76.03(1) of *SIMA*, to determine whether the expiry of the finding is likely to result in injury or retardation, as the case may be, to the domestic industry. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review. Therefore, the Tribunal is required, pursuant to subsection 76.03(12), to make an order either rescinding the finding, if it determines that the expiry of the finding is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

Like Goods

50. Subsection 2(1) of *SIMA*, defines "like goods", in relation to the subject goods, as "(a) goods that are identical in all respect 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".

51. In determining whether goods are "like goods", the Tribunal considers a number of factors, including: physical similarity; manufacturing processes used; marketing methods; price of the goods; substitutability of the subject goods for the other goods; competition between the subject goods and the other goods; end use of the goods (i.e. used for the same purpose); and quality and performance characteristics.

52. When goods subject to an inquiry or an expiry review are not like goods in relation to one another, separate classes of goods are established. No parties participating in this expiry review submitted any evidence or made argument on the issue of classes of goods.

53. Although the subject goods include a wide variety of goods aimed at different segments of the footwear market and are made of two separate components, plastic or rubber, the Tribunal does not find them sufficiently different to justify the creation of separate classes of goods. All the subject goods have

essentially the same functional end use, namely, protecting feet against inclement weather. The Tribunal notes that the characteristics of the like goods in this matter are such that they are similar in many respects to the like goods in other footwear findings.

Domestic Industry

54. Having determined which goods are like goods for the purposes of this expiry review, the Tribunal must now consider which producers constitute the “domestic industry” in order to determine whether the dumping of the subject goods has caused material injury to the domestic industry. Subsection 2(1) of *SIMA* defines “domestic industry” as:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

55. Rallye, Genfoot, Baffin and Hichaud participated in this expiry review. Taken together, they represented more than 80 percent of the total domestic production of the like goods and, thus, constitute the major proportion of the total domestic production of like goods.¹⁸ No evidence was submitted to the Tribunal that any other producers should be included or that any of the above-mentioned producers should be excluded from the determination of the domestic industry. Therefore, the Tribunal finds that, for the purposes of this expiry review, Rallye, Genfoot, Baffin and Hichaud are the domestic producers that constitute the domestic industry.

Likelihood of Injury

56. Subsection 37.2(2) of the *Special Import Measures Regulations*¹⁹ enumerates the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping, if a finding is allowed to expire. The Tribunal reviewed all these factors and found the pertinent ones in the circumstances of this expiry review to be the following: international and domestic market conditions since the original finding; the likely volumes of dumped goods; the likely prices of dumped goods; and the likely impact of dumped goods on the domestic industry.

International and Domestic Market Conditions Since the Original Finding

57. According to published trade data,²⁰ in the last five years, China has consolidated its position as the dominant footwear manufacturer in the world, not only in terms of quantity but also in terms of quality. There are currently over 40,000 footwear manufacturers in China²¹ and, with the expected completion of

18. Tribunal Exhibit RR-2004-008-06 (protected), Administrative Record, Vol. 2A at 19. See, also, Tribunal Exhibit RR-2004-008-14.02L (protected), Administrative Record, Vol. 4 at 414.

19. S.O.R./84-927.

20. No exporter response and only nine importer responses were received, with the importer responses, for the most part, being erroneous and/or incomplete. Accordingly, in evaluating Chinese production volumes, production capacity and exports, the Tribunal has had to rely largely on information available in trade publications regarding all types of footwear, including both subject and non-subject footwear. The Tribunal also relied on evidence presented by the domestic industry. With respect to actual volumes of imports of the subject goods, the Tribunal relied on the CBSA’s enforcement data.

21. Tribunal Exhibit RR-2004-008-03B, Administrative Record, Vol. 1 at 143.

new facilities in western China in 2006, annual production capacity is expected to grow by 100 million pairs.²² In 1999, China produced just under 6 billion pairs of footwear, and its share of world footwear production was approximately 53 percent.²³ In 2003, China's output was close to 8 billion pairs,²⁴ and its share of global footwear production increased to almost 60 percent.²⁵ It should be noted that the output of the world's second largest producer of footwear, India, was less than 1 billion pairs that year.²⁶

58. As to quality, the Tribunal heard testimony that the Chinese footwear industry has become more technologically advanced in the last five years. By way of example, whereas five years ago, China was unable to produce a PVC injection moulded rainboot, today, using Italian-made injection moulding machines, Chinese manufacturers can make this type of boot at a similar level of quality, yet at a much lower price than Canadian manufacturers.²⁷ However, it was noted that the majority of injection moulding machines used by Chinese producers tend to be more mechanical, less automated and, consequently, less expensive to purchase and operate than the ones used by Canadian producers.²⁸ Chinese manufacturers benefit from lower amortization costs²⁹ and, although they may employ more workers, their labour cost advantage more than compensates.

59. There was also testimony that renowned Italian manufacturers of the more sophisticated injection moulding machines were moving production to China and, consequently, given the likely lower cost of manufacturing these machines in China, Chinese factories are now in a position to purchase these Italian machines at reduced costs.³⁰ This is leading to a further enhancement in quality of Chinese production.³¹

60. It is clear from the evidence before the Tribunal that Chinese footwear production has witnessed a dramatic technological revolution of sorts during the course of the past five years. Two Canadian industry witnesses noted that, presently, there is nothing that Canadian manufacturers can produce that Chinese producers cannot similarly produce in terms of the subject goods.³² This was not the case at the time of the Tribunal's original finding. However, Chinese producers still do not do much of their own original design work or research and development.³³

61. Since the issuance of the Tribunal's finding on December 8, 2000, a few changes affecting the Canadian market have occurred. Subsequent to the filing for bankruptcy of a major domestic producer of waterproof footwear, Kaufman, Columbia, a U.S. distributor of clothing and footwear, purchased the rights to Kaufman's Sorel brand name. By the fall of 2001, Sorel waterproof footwear made in China began appearing in the U.S. market. Identical Sorel footwear labelled "made in Macau" or "made in Vietnam" also appeared in Canada at the same time. Another change that has occurred in the past five years is a reduction in the number of domestic producers of like goods. At the time of the original finding, there were five primary producers: Genfoot, Rallye, Baffin, Acton and Régence. Soon, only three will effectively remain, as

22. Manufacturer's Exhibit A-01 at 146, Administrative Record, Vol. 11.

23. Tribunal Exhibit RR-2004-008-10.14, Administrative Record, Vol. 1.2 at 137.

24. Manufacturer's Exhibit A-01 at 7, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 (protected) at 5, Administrative Record, Vol. 12.

25. Manufacturer's Exhibit A-05 (protected) at 133, 135, Administrative Record, Vol. 12.

26. Manufacturer's Exhibit A-01 at 7, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 (protected) at 5, Administrative Record, Vol. 12.

27. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 81.

28. *Ibid.* at 87.

29. *Ibid.*

30. *Transcript of In Camera Hearing*, Vol. 1, 19 October 2005, at 24.

31. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 44.

32. *Ibid.* at 27-28.

33. *Ibid.* at 64.

Régence will cease production of all footwear at the end of 2005, and Acton, now AirBoss, has limited production of like goods, in that it now only produces firefighters' boots.

62. The Tribunal notes that the size of the total apparent Canadian market remained relatively stable during the period of review and that, although sales of imports from China have fallen by 60 percent since the finding was put into place, 2004 saw a significant increase of imports from China.³⁴ It should be noted that, due to the injury finding, Chinese volumes were relatively low during the period of review. However, in terms of market share, the domestic industry saw its portion drop slightly during the period of review despite anti-dumping protection. This decline in market share has been the result of a growing volume of imports from third countries such as Vietnam, Macau and others.³⁵ The Tribunal heard testimony from Genfoot that imported goods originating in these countries caused it to shut down its plant in Contrecoeur, Quebec.³⁶ Since the finding, the industry has experienced large reductions in employment,³⁷ given this closure and the discontinuation of virtually all production by AirBoss.

63. From a financial perspective, the industry's consolidated performance relating to domestic sales of like goods has been relatively stable. A slight decrease in net income was noticed in fiscal year 2004; however, this was due mostly to Genfoot's closure of its Contrecoeur plant.³⁸ Therefore, the consolidated industry data appear to confirm that the anti-dumping protection has helped stabilize domestic production and sales performance. The Tribunal also heard testimony to this effect.³⁹

Likely Volumes of Dumped Goods

64. In 1999, China exported just under 3.5 billion pairs of footwear.⁴⁰ By 2003, Chinese exports grew to about 5 billion pairs,⁴¹ making it by far the world's largest exporter of footwear.⁴² It is evident from these statistics that China has significant capacity to produce footwear for export. The Tribunal finds no reason to believe that what is true for footwear in general would not also be true for the subject goods.

65. There is clear evidence that, over the years, China has been able to gradually expand its share of the U.S. market. In the United States, all Chinese footwear faces the same Most-Favoured-Nation Tariff rate of 37.5 percent. Despite this tariff, China's share of total footwear imports into the United States grew, in terms of value, from 16 percent in 1990 to 69 percent in 2004, in terms of volume, from 35 percent in 1990 to 84 percent in 2004, and in absolute terms, from 0.4 million pairs in 1990 to 1.8 million pairs in 2004.⁴³

66. Despite the fact that the volume of imports of the subject goods into Canada has fallen by approximately two thirds since the finding has been in place, China still holds between 3 and 6 percent of

34. *Pre-hearing Staff Report*, 7 September 2005, Tribunal Exhibit RR-2004-008-05, Administrative Record, Vol. 1A at 20.

35. *Pre-hearing Staff Report*, 7 September 2005, Tribunal Exhibit RR-2004-008-06 (protected), Administrative Record, Vol. 2A at 23.

36. Manufacturer's Exhibit A-04 at 3, Administrative Record, Vol. 11.

37. *Pre-hearing Staff Report*, 7 September 2005, Tribunal Exhibit RR-2004-008-05, Administrative Record, Vol. 1A at 34.

38. *Pre-hearing Staff Report*, revised 13 October 2005, Tribunal Exhibit RR-2004-008-05B, Administrative Record, Vol. 1A at 88; *Protected Pre-hearing Staff Report*, revised 13 October 2005, Tribunal Exhibit RR-2004-008-06B (protected), Administrative Record, Vol. 2A at 94; *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 57-58.

39. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 40.

40. Tribunal Exhibit RR-2004-008-10.14, Administrative Record, Vol. 1.2 at 137.

41. Manufacturer's Exhibit A-01 at 7, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 (protected) at 6, Administrative Record, Vol. 12.

42. Tribunal Exhibit RR-2004-008-10.14, Administrative Record, Vol. 1.2 at 137.

43. Manufacturer's Exhibit A-01 at 93, Administrative Record, Vol. 11.

the market share in Canada.⁴⁴ It is evident to the Tribunal that, even with the finding in place, imports of the subject goods have maintained a presence in the Canadian market.

67. In addition to testimony and evidence about China's enormous capacity to produce the subject goods and its unrelenting penetration of the U.S. market, the Tribunal also heard testimony about how rapidly China could expand its presence in the Canadian market. This is attributed to two main factors: (i) identically branded boots being exported to the United States from China are found in the Canadian market; however, those in Canada are currently imported from Macau or Vietnam⁴⁵ for which there is no injury finding in place; and (ii) Chinese suppliers have a strong presence in the U.S. market, making an expansion into the Canadian market relatively simple and quick.⁴⁶

68. The Tribunal heard testimony that, in order to avoid Canadian anti-dumping duties, Columbia and other manufacturers-distributors of major brands engage subcontractors in Macau and Vietnam to perform the final assembly of their winter boots for export to Canada. It was represented by the domestic industry that approximately 90 percent of the value of these goods are produced in China, even though the boots in question are imported from Macau or Vietnam. In addition, it was alleged that transporting the goods in question to these countries from China, as well as paying subcontractors, has added to the costs for brands, such as those of Columbia, sold in the Canadian market.⁴⁷ It was submitted that, absent the injury finding in Canada, Columbia and other manufacturers-distributors of major brands would likely consolidate production of the subject goods in China in order to reduce costs associated with outsourcing final assembly to Macau and Vietnam.⁴⁸ Consequently, Chinese producers would be able to offer their competing products at potentially lower prices, once production is consolidated in one country.⁴⁹ These facts, it was argued, underscore the readiness and ability of major Chinese competitors to supply Canadian demand at more competitive prices, should the finding be rescinded.

69. Based on the foregoing evidence, the Tribunal is of the opinion that, should the finding be rescinded, the volume of imports of the subject goods into Canada would increase significantly within a short time frame.

Likely Prices of Dumped Goods

70. The domestic industry contends that the export price of the subject goods is extremely low. It was noted that export prices for some types of Chinese bottoms were about the same as the cost of the raw materials that a Canadian producer would face in producing equivalent bottoms.⁵⁰ Witnesses for the domestic industry could not explain this phenomenon, since Chinese producers are believed to face similar costs as Canadian manufacturers for raw materials such as TPR.⁵¹ Another example was given of a PVC injected rainboot where the F.O.B. China price was considerably lower than the Canadian manufacturing cost before profit. The domestic industry admitted that Chinese producers have certain cost advantages, such as low labour costs and the fact that the machinery used is less automated and, thus, less expensive. As a result, Chinese manufacturers spend significantly less on labour and capital expenditures than do their

44. *Pre-hearing Staff Report*, 7 September 2005, Tribunal Exhibit RR-2004-008-05, Administrative Record, Vol. 1A at 23.

45. Manufacturer's Exhibit A-04 at 3, Administrative Record, Vol. 11.

46. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 45.

47. *Ibid.* at 42-43, 47.

48. Manufacturer's Exhibit A-04 at 3, Administrative Record, Vol. 11.

49. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 72, 83.

50. *Ibid.* at 38.

51. *Ibid.* at 85-86.

Canadian counterparts.⁵² In addition, the Tribunal heard testimony, as noted above, that Chinese producers spend very little on research and development, as they copy designs developed by North American competitors.⁵³ Thus, low research and development costs also contribute to low overall costs for Chinese footwear producers. However, despite these cost advantages, witnesses for the domestic industry still contend that the Chinese export prices are artificially low.

71. It is clear to the Tribunal that Chinese producers can be extremely competitive in their pricing for export markets. It appears that they are currently able to price their goods low enough to still be competitive in the Canadian market, despite facing 49 percent anti-dumping duties. The Tribunal is of the opinion that, should the finding be rescinded, Chinese producers, given their low cost structures, would not raise their export prices, but rather take advantage of the lower prices (absent anti-dumping duties) to increase their Canadian market share, especially for lower-end products such as rainboots, a segment of the market in which they are currently not active due to the high anti-dumping duties in place. Given that the CBSA determined a likelihood of resumed dumping,⁵⁴ prices of Chinese goods in Canada, absent the finding, are thus likely to be substantially lower.

Likely Effects of Dumped Goods on the Domestic Industry

72. The Tribunal is of the opinion that, if the finding is rescinded, there would be a significant increase in imports of the subject goods, a decrease in import prices and a subsequent increase in Chinese market share that could only be stemmed by a decrease in Canadian prices.

73. The 49 percent anti-dumping duties applied to the subject goods currently curtail imports. The retailers that testified before the Tribunal currently do not purchase the subject goods.⁵⁵ One retailer testified that it did not purchase the subject goods because, with the anti-dumping duties, the subject goods are priced above the price of like goods.⁵⁶ Yet, should the duties be removed given (i) the importance that retailers attach to price when deciding from whom to purchase like goods,⁵⁷ (ii) the elimination of the inherent advantages that a local supplier has over a foreign supplier due to the seasonality of sales of the like goods, and (iii) the fact that the major retail chains have overseas offices in Asia,⁵⁸ the Tribunal concludes that retailers would be quick to switch source of supply from Canada to China. The competing Chinese goods would, absent the finding, be much more attractive and competitive from a price perspective alone. Moreover, the quality of the subject goods being on an equal footing with that of the domestic goods, quality is not an issue for certain retailers.⁵⁹ Given the retail environment in Canada, where price is the primary factor that influences purchasing decisions, the Tribunal believes that a general decline in market prices would also occur, should the finding be rescinded.

52. *Ibid.* at 85-88.

53. *Ibid.* at 64, 74.

54. Only two Chinese exporters cooperated with the CBSA in its normal value and export price review initiated on November 10, 2004. Normal values were established for certain models of the subject footwear and, whereas one exporter was found not to be dumping, the other was found to be dumping by a margin much lower than 49 percent. All other exporters continue to be subject to the 49 percent advance, and any imports assessed under the advance are considered dumped. See Tribunal Exhibit RR-2004-008-03B, Administrative Record, Vol. 1 at 141.

55. Tribunal Exhibit RR-2004-008-17.03 (protected), Administrative Record, Vol. 6 at 7, 13; Tribunal Exhibit RR-2004-008-17.04 (protected), Administrative Record, Vol. 6 at 36, 42.

56. *Transcript of Public Hearing*, Vol. 2, 20 October 2005, at 144-45.

57. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 26-27; *Transcript of Public Hearing*, Vol. 2, 20 October 2005, at 146, 194-95.

58. *Transcript of Public Hearing*, Vol. 2, 20 October 2005, at 160.

59. *Ibid.* at 159.

74. In this regard, the Tribunal heard evidence to the effect that it is essentially the retailers that set wholesale price points, which domestic producers must then meet.⁶⁰ Even though the “maple leaf” and “Made in Canada” logos may play some role in a consumer’s purchasing decision,⁶¹ it has little or no impact on retailers’ decisions to buy the like goods domestically or to purchase the subject goods offshore. In essence, it was confirmed by retailers and the domestic industry alike that the overriding factor that influences a retailer’s decision to purchase the like goods or subject goods is price.⁶² It was noted that retailers establish retail price points for the various types of like goods or subject goods that they carry and that these retail price points incorporate acceptable profit margins. It is with these price points and profit margins in mind that retailers negotiate wholesale prices with prospective suppliers. The Tribunal heard testimony that retailers and suppliers work together to meet retail and wholesale price points established by retailers and that suppliers will generally look for ways to reduce costs in order to meet the retailers’ desired wholesale prices.⁶³ One witness for a domestic producer indicated that the company was forced to import certain goods in order to meet various price points for a range of promotional goods being ordered by a particular retailer.⁶⁴

75. The effect of larger volumes of imports at reduced prices would be a significant loss in sales and a declining market share for the domestic industry. Therefore, the financial performance of the domestic industry as a whole would be significantly weakened. The Tribunal is of the opinion that this would result in Canadian producers either importing greater volumes of the subject goods in order to compete or shifting their production to China via subcontracting. One domestic producer went as far as to state that, if anti-dumping protection were removed, it would have to import goods from China, as it could not compete on price with Chinese producers.⁶⁵ The Tribunal therefore concludes that the impact of rescinding the finding would be injurious to the domestic industry.

Other Factors

76. The domestic industry does not make some of the “fashion boots” that have come onto the market, e.g. moon boots and boots of cement construction that look like running shoes. Although it is too early to ascertain the effect of moon boots on the domestic market, the boots of cement construction are illustrative of what can happen to domestic production. Although starting from 100 percent of sales of the category of traditional moulded-bottom winter boots, the domestic industry’s share has fallen dramatically in the past two years,⁶⁶ due to the arrival on the market of greater volumes of boots of cement construction, which are non-subject goods. While the market has remained flat, the domestic industry’s market share could have grown with this new product. The Tribunal is of the opinion that, while the rescission of the finding would be in and of itself sufficiently injurious to warrant its continuation, the domestic industry will continue to be injured if it does not react to fashion trends.

77. The Tribunal heard testimony that the export performance of the domestic industry has been severely weakened over the years due to the lack of anti-dumping protection in the United States and the

60. *Ibid.* at 171; *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 79.

61. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 122-23; *Transcript of Public Hearing*, Vol. 2, 20 October 2005, at 159.

62. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 26-27; *Transcript of Public Hearing*, Vol. 2, 20 October 2005, at 146.

63. *Transcript of Public Hearing*, Vol. 2, 20 October 2005, at 169-70.

64. *Transcript of In Camera Hearing*, Vol. 1, 19 October 2005, at 35-36; *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 79; *Transcript of Public Hearing*, Vol. 2, 20 October 2005, at 169-70.

65. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 13.

66. *Transcript of In Camera Hearing*, Vol. 2, 20 October 2005, at 53.

steady increase of competing low-priced Chinese goods in that market.⁶⁷ It is noted that exports of like goods to the United States by the largest domestic exporter consist mainly of transfers made from its plant in Canada to its subsidiary plant in the United States.⁶⁸ The Tribunal concludes that any further weakening of the industry's consolidated export performance is not due to the dumping of the subject goods in Canada, but a result of Chinese import penetration in an unprotected U.S. market. This non-dumping factor has not contributed to the Tribunal's assessment of future injury.

CONCLUSION

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

79. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding made in Inquiry No. NQ-2000-004 in respect of waterproof footwear and bottoms originating in or exported from China.

80. Moreover, the Tribunal suggests that, if and when this order is next reviewed, and if appropriate in the circumstances, a single notice of expiry be issued in respect of any orders or findings in place relating to waterproof footwear and its constituent components and invite the views of persons and/or governments as to whether there are any reasons why the orders or findings should not be joined in a single review.

Patricia M. Close
Patricia M. Close
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Zdenek Kvarda
Zdenek Kvarda
Member

67. *Protected Pre-hearing Staff Report*, revised 13 October 2005, Tribunal Exhibit RR-2004-008-06B (protected), Administrative Record, Vol. 2A at 98; Manufacturer's Exhibit B-02 at 4, Administrative Record, Vol. 11.

68. *Transcript of Public Hearing*, Vol. 1, 19 October 2005, at 31-32; *Protected Pre-hearing Staff Report*, revised 13 October 2005, Tribunal Exhibit RR-2004-008-06B (protected), Administrative Record, Vol. 2A at 100.