



Ottawa, Wednesday, October 21, 1992

Review No.: RR-92-001

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing without amendment the findings of material injury made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and on April 23, 1982, in Inquiry No. ADT-2-82.

**WATERPROOF RUBBER FOOTWEAR ORIGINATING IN OR EXPORTED
FROM CZECHOSLOVAKIA, POLAND, THE REPUBLIC OF KOREA,
TAIWAN, HONG KONG, MALAYSIA, YUGOSLAVIA AND THE PEOPLE'S
REPUBLIC OF CHINA**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing without amendment the findings of material injury made by the Anti-dumping Tribunal, on May 25, 1979, in Inquiry No. ADT-4-79, and on April 23, 1982, in Inquiry No. ADT-2-82.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned finding without amendment (Member Hines dissenting).

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary



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Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing without amendment the findings of material injury made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and on April 23, 1982, in Inquiry No. ADT-2-82.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: August 31 and September 1, 1992
Date of Order and Reasons: October 21, 1992

Tribunal Members: Arthur B. Trudeau, Presiding Member
W. Roy Hines, Member
Desmond Hallissey, Member

Director of Research: Selik Shainfarber
Research Officer: Paule Couët
Statistical Officer: Robert Larose

Counsel for the Tribunal: Gilles B. Legault

Registration and Distribution Officer: Pierrette Hébert

Participants: G.P. (Patt) MacPherson and
Naila Elfar
for The Shoe Manufacturers' Association
of Canada

A. Lambert International Inc.
Genfoot Inc.
Kaufman Footwear (Division of William H.
Kaufman Inc.)
Vimod Rubber Co.

(Manufacturers)

for Andrew Vanderwal
Omnitrade Limited
SVIT Import Export Ltd.

(Importers/Exporters)

Witnesses:

Nathan Finkelstein
President
The Shoe Manufacturers'
Association of Canada

Lise Desjardins
Manager - Rubber Division
A. Lambert International Inc.

Gordon Cook
President
Genfoot Inc.

Stuart I. Snyder
Vice-President Finance and
Secretary Treasurer
Kaufman Footwear (Division of William
H. Kaufman Inc.)

John Foglietta
Vice-President and
Chief Financial Officer
Chamberlain Phipps Canada Limited

Julius R. Gadori
General Manager
Footwear Dept.
Omnitrade Limited

Address all communications to:

The Secretary
Canadian International Trade Tribunal
20th Floor
Journal Tower South
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7



Ottawa, Wednesday, October 21, 1992

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
 W. ROY HINES, Member
 DESMOND HALLISSEY, Member

STATEMENT OF REASONS

THE BACKGROUND

This is a review under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA) of the finding made by the Canadian Import Tribunal (CIT) in Review No. R-7-87, dated October 22, 1987, continuing without amendment the findings of material injury made by the Anti-dumping Tribunal (ADT), on May 25, 1979, in Inquiry No. ADT-4-79, concerning waterproof rubber footwear originating in or exported from Czechoslovakia, Poland, the Republic of Korea (Korea) and Taiwan, and on April 23, 1982, in Inquiry No. ADT-2-82, concerning waterproof rubber footwear originating in or exported from Hong Kong, Malaysia, Yugoslavia and the People's Republic of China (China).

Pursuant to subsection 76(2) of SIMA, the Canadian International Trade Tribunal (the Tribunal) initiated a review of the finding and issued a notice of review on June 1, 1992. This notice was forwarded to all known interested parties and was published in Part I of the June 13, 1992, edition of the Canada Gazette.

As part of this review, the Tribunal sent questionnaires to known manufacturers and importers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. In addition, the record of this review consists of all relevant documents,

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

including the original findings, the notice of review, and public and confidential sections of replies to the questionnaires. All public exhibits were made available to interested parties, while protected exhibits were provided to independent counsel only. Public and *in camera* sessions were held in Ottawa, Ontario, on August 31 and September 1, 1992.

The Shoe Manufacturers' Association of Canada and the manufacturers of the subject goods, A. Lambert International Inc., Genfoot Inc. (Genfoot), Kaufman Footwear (Division of William H. Kaufman Inc.) (Kaufman) and Vimod Rubber Co. (Vimod) were represented by counsel at the hearing, submitted evidence and made argument in support of continuing the finding.

Omnitrade Limited (Omnitrade) and SVIT Import Export Ltd. (SVIT) were represented by counsel at the hearing. They submitted evidence and made argument in support of rescinding the finding or, alternatively, excluding Czechoslovakia.

The Korean Footwear Industries Association (the Korean Association) submitted a written submission in support of rescinding the finding, but did not appear at the hearing.

THE PRODUCT

The subject goods in this review are waterproof rubber footwear constructed wholly or in part of rubber, worn over the foot or shoe, with or without liners, linings, fasteners or safety features. Three categories of footwear are specifically excluded, namely, snowmobile boots, rubber-bottom/leather-top boots and safety footwear that is specially designed to protect the wearer from injury and which incorporates special features such as safety box toes, steel toes, steel safety soles, non-slip soles or specially compounded rubber impervious to acids and other chemicals. The safety footwear which is excluded from the scope of this review is defined as footwear which meets safety standards established by the Canadian Standards Association.

There are various ways to manufacture rubber footwear. The lay-up process requires the preparation of a rubber compound which is calendered into sheeting; the sheeting, with or without a textile lining, is die-cut into the shape of the various parts of the outer soles and uppers; the components are assembled (laid-up) with rubber cement on a conveyor-borne last; and the assembled boot or shoe is vulcanized. 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.

Rubber footwear can also be manufactured by injection moulding and compression moulding processes. In the injection moulding process, a hot thermoplastic rubber compound is injected under high pressure into a fabric-lined mould; when cooled, the product is removed from the mould, trimmed and packed for shipment. In the compression moulding process, pieces or granules of rubber are put into a mould covered by a textile lining as in the injection moulding process where they are simultaneously formed and vulcanized by the application of heat and pressure. This process of manufacturing moulded footwear is most cost efficient when producing large volumes of footwear.

Rubber footwear is available at all trade levels, from wholesalers to large retailers and smaller independent retail stores. It includes commodity-type goods such as

waterproof "city" rainboots, as well as specialized products such as waders for sport or commercial fishing.

THE DOMESTIC INDUSTRY

The Canadian rubber footwear industry consists of four producers: Vimod, Genfoot, The Acton Rubber Company Ltd. (Acton) and Kaufman. These companies account for all known Canadian production of the rubber footwear covered by this review. Kaufman and Acton have been producing rubber footwear for many decades, primarily using the lay-up process. Vimod and Genfoot are comparative newcomers to the rubber footwear industry, having entered the market in the early 1980s with new technology based on injection moulding. All four companies also manufacture product lines not covered by this review.

THE SUMMARY OF THE 1979, 1982 AND 1987 FINDINGS

On May 25, 1979, in Inquiry No. ADT-4-79, the ADT found material injury to domestic production due to the dumping of certain waterproof rubber footwear from Czechoslovakia, Poland, Korea and Taiwan.

It was observed that the imports of the subject goods into Canada were almost entirely from the four subject countries. Largely as a result of their inability to compete with these dumped imports, Canadian producers had not been able to serve the discount and mass merchandiser markets which continued to be mainly the preserve of imports. The ADT did not foresee any significant change in this situation as long as the dumping continued. According to the ADT, the imposition of anti-dumping duties would have permitted the industry to enlarge its market share and benefit from greater utilization of capacity, and the ADT could have expected the industry to increase prices and hence profits.

On April 23, 1982, the ADT found that the dumping from Hong Kong, Malaysia, Yugoslavia and China of waterproof rubber footwear that was substantially similar to the goods covered by the 1979 finding was likely to cause material injury to the production in Canada of like goods. In its decision, the ADT noted that, although the industry had regained some market share following the 1979 finding, this was mostly achieved by recapturing small chains and independent retailers. Many large importers such as mass merchandisers had not returned to domestic sourcing. Instead, they had simply switched sources to the new named countries from the countries subject to the 1979 finding.

On October 22, 1987, the CIT decided to continue, without amendment, the 1979 and 1982 findings. In its review, the CIT noted that the industry's market performance was stronger than in the years preceding the findings and that the industry was in the midst of a transition to more competitive production methods and technology, especially the injection moulding process. The CIT also noted that Czechoslovakia, Korea and Taiwan had maintained a strong presence in the domestic market and that dumping from these three countries had continued unabated since the 1979 finding. Moreover, although a number of the named countries in the 1982 finding had not shipped to Canada in recent years, the CIT remained concerned about the ease and rapidity with which import sourcing was switched from countries subject to anti-dumping measures subsequent to the 1979 injury finding.

OTHER PROCEEDINGS REGARDING WATERPROOF RUBBER FOOTWEAR

In 1991, the Tribunal conducted a review pursuant to section 19 of the *Canadian International Trade Tribunal Act*² of the order withdrawing the General Preferential Tariff (GPT) on rubber footwear. The GPT is a temporary system of tariff preferences introduced by Canada in 1974. It is part of an international system to assist developing countries expand their exports to developed country markets. Under this system, industrial goods originating in developing countries can enter Canada at a lower tariff rate.

Under the GPT, rubber footwear was originally allowed to enter Canada duty free. In response to complaints from domestic manufacturers, the GPT was withdrawn from all beneficiaries with respect to rubber footwear in 1975. As a result, rubber footwear became dutiable at the Most-Favoured-Nation (MFN) rate of 20 percent, except for some countries which qualified under the British Preferential Tariff. From 1975 to date, several reviews of the status of GPT³ benefits for rubber footwear were undertaken resulting in the withdrawal being extended seven times. The last extension, following the review in 1991, resulted in a recommendation that the GPT safeguard measure be extended until the scheduled expiry of the GPT program on June 30, 1994. The Tribunal concluded that Canadian production of rubber footwear faced a threat of injury from the reinstatement of the GPT rate of duty with respect to imports of various rubber footwear.

In its consideration of the facts in that review, the Tribunal had little doubt that GPT-sourced imports could quickly increase their market share through the effects of tariff elimination because of the large export capacity of the GPT source countries relative to the size of the Canadian market and their low production costs. The Tribunal also noted that the effects of GPT reinstatement would be felt in all segments of the rubber footwear market, especially in the low-priced segment. This segment of the market is very price sensitive, as imported boots and domestic boots are fully substitutable.

THE POSITION OF PARTIES

The Industry

The industry requested that the finding be continued without amendment. Counsel noted that, in the years prior to taking the first anti-dumping action in 1979, the industry had been losing market share to imports, especially insofar as mass merchandiser accounts were concerned. After the 1979 finding was put in place, the industry had expected to recapture many of the large accounts that had been lost to dumped imports. This did not happen because importers simply switched sources to countries not named in the 1979 finding, and exporters in these new countries had commenced dumping.

In 1982, a second successful anti-dumping action was taken against these new sources. After the second finding was put in place, the industry steadily improved its competitiveness and recaptured market share, including major mass merchandiser

2. R.S.C. 1985, c. 47 (4th Suppl.).

3. Four of the eight subject countries involved in the anti-dumping findings were also involved in the GPT review, namely, China, Korea, Hong Kong, and Malaysia.

accounts. The protection afforded by the two findings and their subsequent continuation in 1987 was not abused by the industry. Over the past 10 years, prices of waterproof rubber footwear have remained reasonable, and the industry has also demonstrated a good investment record.

If the finding were now rescinded, the situation could quickly revert to the environment which prevailed prior to the first finding in 1979. Mass merchandisers could readily and quickly switch their purchases from domestic sources to cheap imports as they seek to gain price advantages over each other. This situation which made the domestic industry vulnerable to injury was described in a 1991 Tribunal report to the Minister of Finance which recommended the continued withdrawal of the GPT on waterproof rubber footwear.

In support of the industry's contention that dumping was likely to resume, counsel provided a number of examples of low-priced goods currently available from China, Korea and Malaysia. One example showed that a red sole rubber boot from China could be landed in Canada at a cost that was below one of the domestic producers' raw material cost for a comparable boot. The low price of the subject goods from the subject countries was also demonstrated by the fact that most of the countries concerned are able to ship significant volumes to the United States despite the application of a 37.5-percent MFN tariff rate.

Counsel also argued that the subject exporters to Canada were pricing close to normal values, and this made them prone to dumping through, for example, small changes in exchange rates. The propensity to dump was also demonstrated as several of the subject countries are now dumping waterproof plastic footwear in the Canadian market, a product that is highly substitutable with the subject goods under review. The Department of National Revenue, Customs and Excise (Revenue Canada) currently investigated a complaint lodged by the industry in connection with this matter.⁴

As far as Czechoslovakia was concerned, counsel noted that imports from Czechoslovakia had maintained a strong presence in the Canadian market and had held on to their market share despite the anti-dumping finding. Although many significant changes had occurred in Czechoslovakia in the recent past, and the country appeared to be on the way to a market economy, it was still too early to tell where all this would lead. As far as the industry was concerned, Czechoslovakian imports still constituted a risk of dumping, as they were a major foreign source of low-cost subject goods.

Importers/Exporters

Omnitrade, the sole importer of the subject footwear from Czechoslovakia, requested that the finding be rescinded or, in the alternative, that Czechoslovakia be excluded. Counsel for Omnitrade submitted that the nature of trade in Czechoslovakia was in the process of irreversible change, as it had moved towards a market economy. This has resulted in higher production and administrative costs for Czechoslovakian producers of the subject goods and simultaneously higher export prices. Indeed, since

4. Investigation initiated by Revenue Canada on July 9, 1992. The subject countries are Czechoslovakia, China, Korea and Taiwan.

September 1991, export prices have exceeded normal values calculated by Revenue Canada.

Furthermore, the principal Czechoslovakian producer of the subject goods, SVIT, had reduced capacity by converting facilities used to produce rubber footwear to the production of other types of footwear. Currently, the SVIT factory had greater demand for rubber footwear than capacity to meet that demand. A large portion of that demand was coming from European markets following acceptance of Czechoslovakia as an associate member of the European Free Trade Association. As a result, SVIT had to curtail shipments to Canada by about 50 percent of the amount originally ordered by Omnitrade in 1992.

The industry evidence on low-cost goods had focused on goods originating in the Far East. These low-cost goods were as much a concern to Czechoslovakian exporters as they were to the domestic industry. Czechoslovakian goods were in the mid-price range of the Canadian market where they occupied a certain market niche and held a loyal customer base. Furthermore, Czechoslovakian goods had been subjected to little or no anti-dumping duties in the recent past.

THE ECONOMIC INDICATORS

The domestic market for waterproof rubber footwear has witnessed a steady decline in demand which commenced in the mid-1980s. From a high of 3.9 million pairs in 1985, the market has fallen to 2.7 million pairs in 1991, a decline of roughly 30 percent. Industry sales, however, have been relatively stable and, consequently, the market share held by the industry improved by 15 percentage points over the period from 1985 to 1991, from 54 to 69 percent. Between 1987 and 1991, the period under consideration in this review, the industry gained 7 of these 15 percentage points of market share.

Industry sales increased modestly from 1988 to 1990, averaging approximately 2 million pairs, before declining somewhat in 1991 amidst the recessionary conditions. Industry sales were bolstered over the past five years by sales to export markets, in particular to the United States. Specifically, export sales increased tenfold between 1987 and 1991, to over 300,000 pairs.

Total imports fell by one third from 1987 to 1991, and their market share declined from 38 to 31 percent. Imports from the subject countries absorbed the decline, losing 14 percentage points of market share over the five-year period. Imports from Korea and Taiwan have been responsible for most of the drop. Throughout the period, Czechoslovakia maintained a strong presence in the market and, since 1988, has been the largest exporter among the subject countries. Non-subject countries doubled their market share over the period, rising from 5 to 12 percent, primarily due to a substantial increase in U.S. imports.

In terms of aggregate financial performance for the four domestic producers, from 1988 to 1991, net profit margins on domestic sales of the subject goods averaged approximately nine percent over the period. However, the industry is operating at lower levels of capacity.

Looking at the industry on a disaggregated basis, the data show a difference in performance between the two firms which employ the traditional lay-up process of

production and the two firms which employ the injection moulding process. Over the past five years, the former firms have lost market share, and their sales and production volumes have decreased. In contrast, the latter firms have gained market share, and their sales and production volumes have increased.

Regardless of the production methodology employed, each of the firms within the industry relies on production and sales of the subject rubber footwear to achieve efficient production runs on non-subject footwear incorporating rubber components. Thus, a drop in production volume of the subject goods would increase unit production costs across the full range of subject and non-subject goods manufactured by the industry, adversely affecting its overall competitiveness.

THE REASONS FOR DECISION (Majority Opinion)

Under subsection 76(5) of SIMA, a finding expires after five years unless reviewed and continued by the Tribunal. This provision is consistent with paragraph 1 of Article 9 of the GATT Anti-Dumping Code⁵ which indicates that a finding should be in place only as long as it is necessary to counteract the injurious effects of dumping.

In our view, it is clear from the foregoing provisions that there are no specific limits on the duration of a finding. It is incumbent on the Tribunal to examine each case on its own merits and to decide, based on the evidence, whether circumstances warrant continuing or rescinding the finding. If this examination leads to the conclusion that there is an ongoing risk of injurious dumping, then the finding should be continued. If not, the finding should be rescinded.

The present review is the second review of the subject 1979 and 1982 findings. In the first review, in 1987, the CIT concluded, on the basis of evidence before it, that the subject countries posed an ongoing risk of injurious dumping, and the finding was continued. After reviewing the evidence in this case, we are of the view that the risk of dumping and the susceptibility of the industry to such dumping is still present to an extent that warrants a further continuation of the finding without amendment. We have arrived at this conclusion for the reasons set out below.

The domestic industry has been facing a shrinking market for waterproof rubber footwear for the last five years. In fact, the total market volume decreased by 17 percent between 1987 and 1991. Although the industry has taken a growing share of this declining market, largely because of the beneficial effects of the finding, its domestic sales have been less than robust in the face of weak market conditions. In the last two years, market conditions have been particularly weak, not only because of the recession but also because of other factors such as the effects of the goods and services tax and the application of the Quebec provincial sales tax on footwear (which was not previously subject to Quebec sales tax). The interaction of these various elements creates an economic environment in which prices are generally under downward pressure.

Although the market for the subject rubber footwear is comprised of a number of different products, the most important item in terms of volume, comprising a majority

5. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, Geneva, April 12, 1979, GATT BISD 265 (1980).

of domestic production and imports, is the basic waterproof rubber "city" boot. This footwear is a commodity product that is highly price sensitive. Moreover, a significant portion of the market for this large volume product is concentrated in the hands of relatively few large retail chains and mass merchandisers. This concentration makes the loss of a few accounts potentially critical to the industry.

As noted by the Tribunal in the 1991 GPT Safeguard Review, these mass merchandisers compete aggressively with each other for market share, primarily on the basis of price. This is especially true for commodity items. This competitive pressure forces them to seek low-priced goods from domestic and foreign sources. In our estimation, in circumstances of weak market conditions such as those that exist presently, the risk of dumping is especially high.

We note that many of the named countries, especially Korea, China, Malaysia and Poland, have large export capacity relative to the size of the Canadian market. This is clearly evidenced by their large volume of shipments to the United States, where most of the subject countries maintain a substantial presence. In contrast, exports to Canada by most of the subject countries have declined steadily in the last five years. However, in our view, this decline stems not from a lack of interest in the Canadian market but rather from constraints imposed by the anti-dumping finding which makes the Canadian market less attractive than other markets, such as the United States, where no anti-dumping finding is in place.

It is not in dispute that many of the subject countries are very low-cost sources of the subject footwear, especially in the high-volume commodity end of the market. In alluding to this point in the 1991 GPT Safeguard Review, the Tribunal noted that, to compete effectively in the U.S. market, GPT-sourced goods had been able to overcome the effects of a 37.5-percent MFN tariff rate in the United States that was almost double the 20-percent MFN tariff rate in Canada. The Tribunal, in that case, went on to conclude that the cost relief afforded GPT-sourced imports through tariff elimination would "almost certainly" result in a downward price spiral in the Canadian market causing injury to Canadian producers. While the 1991 GPT Safeguard Review focused on what would happen in the event that tariffs were reduced, in our view, the conclusions drawn there are also applicable to what would happen in this case if domestic prices were undercut by dumping.

In the review conducted in 1987, the CIT noted that dumping from the subject countries had "continued unabated" despite the finding. Similarly, in the present review, enforcement data from Revenue Canada show that, of the volumes of the subject goods imported in the last five years, a high proportion was dumped, in some cases at margins as high as 22 percent. Although the total volume of imports may be small, this evidence of continued dumping raises the same concerns in our minds as were raised in the mind of the CIT about what would happen without the discipline of a finding.

These concerns are heightened by specific evidence adduced by the industry on the cost of the subject footwear originating in a number of the subject countries such as China, Korea, Malaysia and Hong Kong. This evidence shows that many products from the subject countries can be landed in Canada at a cost that is below the domestic cost of production. Indeed, one example indicated that a laid-up red sole rubber boot from China can be landed in Canada at a cost that is below the raw material cost for the same boot produced by domestic manufacturers that employ the same lay-up process. Such

wide cost disparities suggest a strong possibility that the subject goods are being offered for export at prices that are below normal values.

The above concerns are further reinforced by the fact that, on October 7, 1992, following an investigation initiated on July 9, 1992, Revenue Canada made a preliminary determination of dumping against Czechoslovakia, China, Korea and Taiwan involving waterproof plastic footwear. Many of the goods covered by the October 7, 1992, preliminary determination are highly substitutable with the subject goods in this review.

We note that many of the industry's aggregate economic indicators are currently positive. Its market share is up by 7 percentage points since 1987, and it is operating at profitable levels. In our view, this reflects, among other things, the investments that the industry has made and the benefits that it has derived from the existence of the finding. However, the industry as a whole still has considerable slack capacity, especially among those producers employing the lay-up process. In the 1987 finding, the CIT noted that these producers remained highly vulnerable to dumping because of their high costs of production compared to producers using the injection moulding process. The evidence before us suggests that a high degree of vulnerability exists today in this part of the industry.

Industry witnesses testified that the industry's outlook could rapidly change from positive to negative in a matter of months if the finding were rescinded. If one major mass merchandiser were to import dumped goods, the others would quickly follow suit in a chain reaction which would result in lower prices, increased unit costs of production and squeezed margins that would threaten the viability of the industry. We believe that this testimony fairly describes the consequences which could realistically ensue if dumping were to resume, as we believe it could, given the history, facts and circumstances of this case.

We note that, of the subject countries, only Czechoslovakia participated in the hearings conducted in this review. Counsel for Czechoslovakia requested that Czechoslovakian exporters be excluded from the finding because the country's move to a market economy had eliminated the threat of injurious dumping. While the developments in Czechoslovakia are encouraging in terms of diminishing the risk of dumping, we felt that it is premature to conclude that the risk has been reduced to an extent which warrants an exclusion at this time. The Czechoslovakian economy is obviously still in a state of transition, and it is too early to foresee what the final outcome will be. In the meantime, Czechoslovakia is currently the largest exporter to Canada of the subject goods from among the subject countries, and it has maintained a strong presence in Canada since the last review in 1987. Moreover, for most of the review period, a substantial percentage of Czechoslovakian goods have been found to be dumped by Revenue Canada at varying margins up to six percent.

We also note that there has been a marked tendency, in the past, for importers to switch sources from country to country to avoid the imposition of anti-dumping duties. In this context, if a major source of the subject goods such as Czechoslovakia were excluded, this could easily nullify the effects of the finding in the event of a resumption of dumping. The same reasoning applies to the other subject countries, for example Poland, which did not participate in the review, but which remains a major potential source of the subject goods.

For the foregoing reasons, the majority of the Tribunal has concluded that the finding should be continued without amendment.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

DISSENTING OPINION (Member Hines)

The rubber footwear industry in Canada, as in many other countries, has had to make dramatic adjustments over the past 25 years due to changing world economic conditions and particularly the emergence of suppliers from low-cost sources. The end result of this process is a substantially reduced domestic industry consisting of only four firms, two of which use the injection moulding process and concentrate their efforts in the production of the larger volume product lines, while the other two primarily rely on the traditional lay-up process of production which allows them to manufacture both the high-volume lines as well as specialty items directed to particular end users.

The difficulties that faced the domestic industry have been recognized by the Canadian government which took various measures to ensure that no preferential rates of customs duties were available to imports of these products from low-cost sources and that anti-dumping duties were in place to protect the industry against injurious dumping. As a result, the main economic indicators for these firms and the industry are now positive.

There is no doubt in my mind that, over the long term, the industry will continue to face very stiff import competition driven by the desire of both Canadian importers to seek out the lowest cost sources and exporting countries to seek to capture a share of the Canadian market. This will be especially true in the low-priced, high-volume end of the rubber footwear market. This situation is not peculiar to this industry, but is the reality confronting most industries producing internationally traded commodities in today's world. The imposition or continuation of anti-dumping duties is not, in my opinion, either warranted or appropriate to provide relief to the domestic industry from normal import competitive forces.

The present finding has been in place against some countries since 1979 and others since 1982. While the duration of an order or finding by itself need not be a major consideration for the Tribunal in examining a request for continuation of a finding, we must be mindful that Parliament, in providing a five-year expiry provision in the legislation (unless reviewed and continued by the Tribunal under subsection 76(5) of SIMA), clearly intended that an anti-dumping duty, once imposed, not be continued indefinitely. This provision is a recognition of the nature of the special protection provided by this legislation and is in keeping with Canada's obligations under the GATT Anti-Dumping Code. More importantly, in arriving at its decision, the Tribunal must weigh the evidence and testimony that it receives regarding the propensity to dump in the future and the likelihood of such dumping to cause or threaten injury to the domestic industry.

In review cases such as the present one, the domestic industry has already benefited for a number of years from the special protection afforded by the anti-dumping legislation to allow time for adjustments to be made. This protection imposes a cost which is generally borne by Canadian consumers through higher prices for the subject goods. Because of the costs, there is a heavy onus on the domestic industry to make a persuasive case, supported by substantive evidence and not mere allegation, as to why a continuation of a dumping finding should be granted. I am not convinced that the arguments and evidence presented in this case support the continuation of the finding.

Of the eight exporting countries involved in this finding, only Czechoslovakia was represented at the hearing, and a written submission was received on behalf of Korea. The absence and silence of the other six countries does not, in my opinion, diminish the obligation of the Tribunal to weigh all of the facts and information before it in arriving at a decision. In this regard, the evidence before the Tribunal can be summarized as follows.

- (1) There have been no imports from either Poland or Yugoslavia since 1987.
- (2) Between 1987 and 1991, the share of the import market supplied by imports from the subject countries, other than Czechoslovakia, declined from 49 to 15 percent. China never supplied more than 4 percent and Hong Kong never more than 1 percent of the import market. During this period, Korea's share of the import market declined from 32 to 5 percent. Taiwan's share declined from 14 to 1 percent and Malaysia's share increased from 0 to 6 percent. Combined, these countries supplied significantly less in 1991 than either Czechoslovakia (37 percent) or the United States (40 percent).
- (3) Revenue Canada found dumping in respect of some of the 1991 imports from each of the subject countries mentioned in the previous paragraph. Counsel for the domestic industry suggested that this may have been due to currency fluctuations or attempts to price too close to the established normal values.
- (4) Czechoslovakia was the second largest supplier of waterproof rubber footwear to the Canadian market in 1991 and has maintained a strong presence in the market since 1988. The witness for the importer from this source, Omnitrade, testified that, because of the movement to a market economy in Czechoslovakia, increased production costs are being reflected in increased export prices and that, since 1991, export prices have been substantially higher than normal values. Moreover, there is increased demand for Czechoslovakian footwear in Europe as production capacity is being reduced. Further, the witness noted that Czechoslovakian products are not the lowest priced in the Canadian market, and they no longer supply the major Canadian accounts.
- (5) The Korean Association submitted that Korean producers were reducing their production of the subject goods to concentrate on the production of leather athletic footwear. According to the Korean Association, average Korean prices for the subject goods were high, and Korean producers had no intention of increasing their current small presence in the Canadian market since their principal export markets were the United States and Japan.
- (6) A number of pricing examples were supplied by the industry. These included two price quotes on red sole rubber boots, f.o.b. China and Hong Kong. The price of a red sole rubber boot from China purchased in the United States was also provided and netted back to an f.o.b. price based on certain industry assumptions pertaining to freight and other costs. This latter example purported to show that the boot from China could be

landed in Canada at a cost that was below one domestic producer's raw material cost for a comparable boot.

I find that the domestic industry did not provide any substantive information to contradict the evidence received from the witness for Omnitrade or to counter the statements made in writing to the Tribunal by the Korean Association. I have seen no evidence relating to capacity utilization in the subject countries nor evidence showing lost sales in the Canadian market that can be directly attributable to dumped imports. Furthermore, the domestic industry has not demonstrated that major Canadian importers are currently making efforts to source imports from the subject countries or to seek out new low-cost sources of supply.

I have examined the price evidence submitted by the industry. While the prices cited clearly indicate the availability of competitively priced imports, they do not, in my view, establish that such imports are being, or are about to be, priced below normal values. There are no data whatsoever on foreign "home market" prices or production costs. In one example, the industry has compared the raw material cost of one domestic producer, a high-cost producer, with the estimated landed cost of a red sole rubber boot from China. This example does not, in my view, shed any light on production costs in China or on whether such boots might be dumped. I am also uneasy with the lack of precision in the industry's pricing evidence. Specifically, several of the price examples include what appear to me to be rough and somewhat inconsistent estimates on the various costs, such as transportation costs, which need to be added to f.o.b. prices at foreign ports to arrive at a Canadian landed price.

However, even if I take these price examples at their face value, I do not see that they undercut the prices of the most efficient Canadian producer. More particularly, it appears to me that at least one domestic producer can compete directly with imports at the prices cited for imported products in the high-volume commodity end of the market. More generally, the enhanced competitiveness of the Canadian industry is illustrated by its export performance in the United States where it is shipping increasing volumes of the subject goods despite the strong presence of competitively priced imports from most of the subject countries. It is also relevant to note that U.S. producers have become the largest source of import competition in Canada in volume terms, as competition from the subject countries has declined in recent years.

While there is some evidence from Revenue Canada of continued dumping by all the subject countries except Poland and Yugoslavia, as noted above, imports from sources other than Czechoslovakia have declined significantly during the review period, and some suppliers have virtually vacated the Canadian market. Given the relatively small volume of trade involved, I do not feel that the enforcement data can be relied on to conclude that there is a propensity to dump by the subject countries concerned. In any event, this evidence is, in my view, more than offset by the fact that there has been no anti-dumping action taken by U.S. producers against imports from the subject countries that have collectively maintained a strong presence in the U.S. market despite the obstacle of a 37.5-percent MFN tariff rate.

I note that, on July 9, 1992, Revenue Canada initiated an investigation into the dumping of waterproof plastic footwear from Czechoslovakia, China, Korea and Taiwan. On October 7, 1992, the investigation produced a preliminary determination of dumping against each of the above-named subject countries. That proceeding is still in its early

phases, and it may or may not conclude ultimately with a positive injury finding and the imposition of anti-dumping duties. In my view, it is premature to draw conclusions about the significance, if any, of that investigation to this case.

There is clearly a past history of dumping in this industry, but that alone is not, in my opinion, sufficient reason to conclude that the propensity to dump will always remain. According to data available, international production has been declining worldwide in the past 10 years. Producers have been adjusting continually to this new reality and the introduction of new production processes. The Tribunal received considerable testimony from domestic producers regarding their successful efforts in this regard and their use of state-of-the-art machinery and equipment. In this regard, it is relevant to note that the Canadian industry has been continually increasing its share of the domestic market, that it is the main supplier to all of the major domestic retailers, that it is increasing its export sales and that it is now profitable. The evidence shows that, in percentage terms, the industry's profitability on sales of the subject goods exceeded profitability on sales of non-subject goods. It would also appear from the evidence that, while the four domestic producers compete with each other on certain product lines, their product orientation and customer base have permitted a certain degree of specialization and widely differing prices within and between product lines.

Given the foregoing, I must conclude, based on the evidence and testimony received by the Tribunal, that the continuation of this finding is not warranted. The Canadian industry has demonstrated that it can compete with fair import competition over the normal protective tariff which has been extended with the withdrawal of the GPT on waterproof rubber footwear. Should the situation change, and dumping again becomes a major problem for the Canadian industry, I expect that it would seek speedy remedial action under SIMA.

For the foregoing reasons, I am of the view that the finding of material injury against the subject countries should be rescinded.

W. Roy Hines
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Member