CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, May 2, 1995

Review No.: RR-94-003

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

WOMEN'S LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN; WOMEN'S LEATHER BOOTS ORIGINATING IN OR EXPORTED FROM POLAND, ROMANIA AND [THE FORMER] YUGOSLAVIA; AND WOMEN'S NON-LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN

O R D E R

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its findings of material injury made on May 3, 1990, in Inquiry No. NQ-89-003.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the findings in respect of the dumping in Canada of women's leather and non-leather boots originating in or exported from the People's Republic of China and in respect of the dumping in Canada of women's leather and non-leather shoes originating in or exported from the People's Republic of China, excluding:

(1) women's shoes, irrespective of the material of the uppers, having a "first cost" (F.O.B. People's Republic of China) above CAN$25.00 per pair;

(2) women's shoes with leather uppers having a "first cost" (F.O.B. People's Republic of China) less than CAN$5.75 per pair;

(3) women's shoes with non-leather uppers having a "first cost" (F.O.B. People's Republic of China) less than CAN$3.50 per pair;

(4) women's shoes with uncoloured, dyeable uppers of woven fabrics made wholly of natural fibres or cellulosic man-made fibres; and

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(5) women's shoes designed and marketed for aerobics, basketball, fitness walking or run/walk, but not designed or marketed for hiking or other walking activities; involving special technology, with a single or multi-layer moulded, not injected, sole manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as:
(i) hermetic pads containing gas or fluid;
(ii) mechanical components which absorb or neutralize impact; or
(iii) materials such a low-density polymers;
and imported into Canada at a value for duty equal to or greater than US$9.90 per pair.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the findings in respect of the dumping in Canada of women's leather boots originating in or exported from Brazil, Poland, Romania and the former Yugoslavia, the dumping in Canada of women's leather and non-leather boots originating in or exported from Taiwan, and the subsidizing of women's leather boots from Brazil; and in respect of the dumping in Canada of women's leather shoes originating in or exported from Brazil, the dumping in Canada of women's leather and non-leather shoes originating in or exported from Taiwan and the subsidizing of women's leather shoes from Brazil.

Lise Bergeron
Lise Bergeron
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, May 16, 1995

Review No.: RR-94-003

WOMEN'S LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN; WOMEN'S LEATHER BOOTS ORIGINATING IN OR EXPORTED FROM POLAND, ROMANIA AND [THE FORMER] YUGOSLAVIA; AND WOMEN'S NON-LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the findings of material injury made by the Canadian International Trade Tribunal on May 3, 1990, in Inquiry No. NQ-89-003.

Place of Hearing and Pre-Hearing Conference:	Ottawa, Ontario
Date of Pre-Hearing Conference:	February 20, 1995
Dates of Hearing:	February 27 to March 9, 1995
Date of Order:	May 2, 1995
Date of Reasons:	May 16, 1995
Tribunal Members:	Lise Bergeron, President Member Charles A. Gracey, Member
Director of Research:	Sandy Greig
Lead Researcher:	Richard Cossette
Researchers:	Don Shires Paul Berlinguette Shiu-Yeu Li
Economist:	Simon Glance
Lead Statistical Officer:	Nynon Pelland
Statistical Officers:	Robert Larose Margaret Saumweber Sonia McEachern Marcie Doran Lori Ralko
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	Les Chaussures Régence inc.
	Chaussures Henri Pierre Inc.
	Tender Tootsies Ltd.
	Radius Footwear Inc.
	Brown Shoe Company of Canada, Ltd.
	A.R. Clarke Limited
	(Producers)
	Brenda C. Swick-Martin
	Teresa A. Troester
	Deborah A. Barrington
	J. Richard Giggal
for	Canadian Association of Footwear Importers Inc.
	168700 Canada Inc./Sacha London Reg'd
	M & M Trading Inc.
	Gredico Footwear Limited
	VWV Enterprises
	Nine West Canada, a division of
	The Best Shoe Company Ltd.
	Brenda C. Swick-Martin
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for	Cole•Haan
	Donald Kubesh
	Susan M. Hutton
for	Reebok Canada Inc.
	Richard G. Dearden
	Randall J. Hofley
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	(Importers)
	Richard S. Gottlieb
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	Sharon E. Maloney
for	Retail Council Footwear Committee
	(Retailers' Committee)

Peter Clark
Chris Hines
Brigitte Goulard
Adimar Schievelbein
for ABICALÇADOS

(Association of Brazilian Footwear Manufacturers and Exporters)

Piotr Wozniak
Commercial Counsellor
Trade Commissioner's Office of
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(Other)

Witnesses:

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The Shoe Manufacturers' Association of Canada

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President
Les consultants Émile Gagnon Ltée

Alain Drolet
Vice-President of Marketing
Les Chaussures Régence inc.

Yvon Maltais
Controller
Les Chaussures Régence inc.

Xavier Leclercq
General Manager
Chaussures Henri Pierre Inc.

Jim Perivolaris
President
Tender Tootsies Ltd.

Gary Chamandy-Cook
President
Radius Footwear Inc.

Ken Gilbertson
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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, May 16, 1995

Review No.: RR-94-003

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

WOMEN'S LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN; WOMEN'S LEATHER BOOTS ORIGINATING IN OR EXPORTED FROM POLAND, ROMANIA AND [THE FORMER] YUGOSLAVIA; AND WOMEN'S NON-LEATHER BOOTS AND SHOES ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN

TRIBUNAL: LISE BERGERON, Presiding Member
CHARLES A. GRACEY, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*[1] (SIMA), of the findings of material injury made by the Canadian International Trade Tribunal (the Tribunal) on May 3, 1990, in Inquiry No. NQ-89-003, concerning:

(1) the dumping in Canada of women's leather boots originating in or exported from Brazil, Poland, Romania and the former Yugoslavia,[2] and of women's leather and non-leather boots originating in or exported from the People's Republic of China (China) and Taiwan, and the subsidizing of women's leather boots from Brazil; and

(2) the dumping in Canada of women's leather shoes originating in or exported from Brazil, and of women's leather and non-leather shoes originating in or exported from China and Taiwan, and the subsidizing of women's leather shoes from Brazil.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the findings and issued a notice of review[3] on November 10, 1994. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent review questionnaires to known domestic producers and selected importers and exporters of the subject goods. From the replies to these review questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. As part of its research activities, the Tribunal's research staff contacted domestic producers and importers in order to answer any questions pertaining to the review questionnaires. Tribunal members visited the premises of

1. R.S.C. 1985, c. S-15.
2. Now consisting of Bosnia, Herzegovina, Croatia, Macedonia, Slovenia and Yugoslavia (Montenegro and Serbia).
3. Canada Gazette Part I, Vol. 128, No. 47, November 19, 1994, at 4454.

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Brown Shoe Company of Canada, Ltd. (Brown Shoe) and Norimco, Division of Bata Industries Limited, to view the production process. A report describing these visits was prepared and distributed to counsel.

The record of this review consists of all relevant documents, including the 1990 findings, the public and protected pre-hearing staff reports from the 1990 inquiry, certain documents transferred from the record of the 1990 inquiry, the notice of review, public and confidential replies to the review questionnaires and the public and protected pre-hearing staff reports. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

A pre-hearing conference was held in Ottawa, Ontario, on February 20, 1995, as well as public and *in camera* hearings, which were held from February 27 to March 9, 1995.

During the hearing, Member Guay suddenly took ill, was hospitalized and could not continue as a member of the panel. Member Russell was appointed to the panel until the Tribunal could decide how to proceed. The Tribunal invited submissions from the parties on the issue. Counsel, for the most part, argued that "he who hears must decide." The predominant view of the parties was that the two remaining members should continue with the case rather than bring in another member. In support of this, they referenced subsection 9(3) of the *Canadian International Trade Tribunal Act*,[4] which allows the Chairman of the Tribunal to authorize the remaining members to continue to hear and dispose of the matter. The Tribunal agreed, and the Chairman directed the two remaining members to hear the balance of the case and to make the order. The Tribunal notes that Member Russell, who sat in for a short period of time during the hearing, did not participate in the Tribunal's deliberations.

PRODUCTS

The products under consideration in this review are described in the findings as women's shoes and boots with uppers made of leather and non-leather materials and manufactured in sizes 4 and up (European equivalent: 34 and up). The subject goods do not include sandals, slippers, sports footwear, waterproof rubber footwear, waterproof plastic footwear, safety footwear incorporating protective metal toe caps, orthopedic footwear, wooden shoes, disposable footwear and canvas footwear. Also, the subject goods do not include unassembled footwear and overshoes worn over other footwear.[5]

The organization of a shoe factory varies with the type and quality of footwear produced and with the size of the factory, but there is, nevertheless, a similarity between most plants. A plant is usually divided into several distinct departments.

The manufacturing process begins in the pattern department where patterns are cut for a certain style. From the different patterns, dies are made for the cutting department. The cutting department cuts components from leather skins or other material, as well as the lining, using cutting dies and a cutting machine. The components and pieces of lining are then bundled in multiples and sent to the fitting department, where all these different parts are stitched and assembled. This department is also responsible

4. R.S.C. 1985, c. 47 (4th Supp.).
5. For further clarification, refer to Inquiry No. NQ-89-003.

for many other tasks, such as perforating, pinking,[6] skiving,[7] splitting, doubling, seam rubbing and taping, cementing and folding, eyeletting, lacing, etc. Meanwhile, the outsoles, insoles, counters, box toes and other various bottom stock items are assembled and tied into bundles in the stock fitting department. In the lasting department, the insole is attached to the bottom of a plastic form known as a "last." The shoe or upper is pulled over the last by various types of machines, which secure the upper to the insole. The lasted upper is then roughed and cemented with a nitrocellulose cement, to which the sole is pressed. In the finishing department, the shoe is cleaned, touched up and sprayed. After final inspection, the finished footwear is packed for shipping.

There are several other methods of constructing a shoe, including welted, stitchdown, vulcanization and injection moulding, but the cemented method described above is the most widely used as it is a relatively inexpensive process.

DOMESTIC PRODUCERS

A total of 39 producers reported domestic production of women's boots and shoes in 1993, compared to 47 in 1990. Production of women's footwear is regionally concentrated in Central Canada, with the provinces of Ontario and Quebec accounting for over 95 percent of the production volumes.

The period since the 1990 findings has been one of rationalization and reorganization for domestic producers of women's boots and shoes. Some firms have closed their operations completely. Some firms have been acquired by other firms in the industry, and new firms have entered the industry**.**

During the same period, many of the firms rationalized their internal operations and developed market niches and branded products. As well, certain producers have invested in computer-assisted design and manufacturing systems and modern technology in order to streamline production. Some domestic producers are also adjusting to the evolving international environment and taking advantage of market opportunities in the United States.

SUMMARY OF THE 1990 FINDINGS

On May 3, 1990, the Tribunal found that the dumping of the subject goods from Brazil, Poland, Romania, the former Yugoslavia, China and Taiwan, and the subsidizing of the subject goods from Brazil were materially injurious to the production in Canada of like goods.

In reaching its decision, the Tribunal concluded that there were two classes of "like goods," namely, women's leather and non-leather boots and women's leather and non-leather shoes, and that the question of whether dumped and subsidized goods had caused, were causing and were likely to cause material injury to domestic production was to be considered separately for each class.

The evidence showed that, from 1986 to 1989, sales of domestically produced boots and shoes declined by 1.5 and 5 million pairs, respectively. Employment fell by 11 percent in boot production and by

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6. Pinking is piercing, normally for decorative purposes.
7. Skiving is splitting, paring or grinding the surface of the material to be used so that, on overlaps, the material does not hurt the foot.

40 percent in shoe production. Gross and net margins and capacity utilization also declined in both boot and shoe production. In the Tribunal's view, the evidence clearly revealed the severity and extent of the injury suffered by both the domestic boot and shoe industries, and, accordingly, the Tribunal considered that the past and present injury was material.

The Tribunal found a clear causal link between imports of the dumped and subsidized women's footwear and the material injury caused to domestic production of the subject boots and shoes from 1986 to 1989. Although several other factors affected conditions in the footwear market during this period, including the full phasing out of safeguard quotas in 1988 and changing consumer preferences for athletic and so-called "ath-leisure" footwear, their impacts were secondary to the effects of the dumping and subsidizing. The Tribunal accepted that the subject countries may have had a comparative cost advantage over domestic producers, but found that the large market gains made by the subject countries were only made possible by the significant margins of dumping and the amounts of subsidy.

The Tribunal also concluded that there was a likelihood of continued material injury from dumped and subsidized imports, as there was no indication that imports from the subject countries would decline.

POSITION OF PARTIES

Domestic Industry

Counsel for The Shoe Manufacturers' Association of Canada (SMAC) submitted that domestic producers of women's boots and shoes are vulnerable to the inevitable reduction in prices and increase in the volume of the subject imports which would occur, if the findings were rescinded.

Counsel for SMAC argued that the effect of a rescission of the findings would be a large and immediate increase in the volume of imports from the subject countries. This assertion was supported by indications that domestic producers themselves would replace their own production with imports and by the fact that total imports from the subject countries had increased in terms of market share since the findings. Particular concern was raised with regard to Chinese imports, which have increased significantly since the findings. According to counsel, China has progressed rapidly in terms of the quality and variety of boots and shoes offered in the marketplace, and a rescission of the findings against China would lead to an immediate and large increase in the volume of imports of women's footwear from that country. With regard to the price effects of a rescission of the findings, counsel suggested that the landed price of Chinese imports would drop by the same order of magnitude as the current advance factor imposed on imports from that country by the Deputy Minister of National Revenue (the Deputy Minister). In addition, counsel noted that Chinese exports are subject to quota measures in the European Community and to anti-dumping duties in Mexico and New Zealand.

Regarding the propensity to dump on the part of Brazilian exporters, counsel for SMAC argued that the economic motivation to dump increases as capacity utilization falls in an exporting country. They submitted that Brazilian producers are currently in this situation, as evidenced by the closure of many plants and a declining export volume. Further, the impact of Brazilian imports on prices in Canada, in the event of a rescission, would also be substantial and instantaneous, given the advance factors of up to 45 percent currently in force.

Counsel for SMAC also considered whether a rescission of the findings was likely to cause material injury to the production in Canada of boots and shoes. In this context, counsel noted that the findings have permitted the creation of new firms in the boot industry and the re-establishment of some domestic shoe production. According to counsel, a rescission would detract from these gains and would lead to the restriction of domestic production to only high-end products, the outright replacement of domestic production with imports or the termination of production altogether, with commensurate reductions in employment. Counsel also submitted that strong domestic sales need to be maintained as a base from which to develop export markets.

Finally, counsel for SMAC submitted that a rescission would have a serious negative impact on the performance of related industries, such as tanneries and other component suppliers to the footwear industry in Canada, which, in some cases, depend heavily on the footwear industry.

Importers, Retailers' Committee, Association of Brazilian Footwear Manufacturers and Exporters, and Other

Canadian Association of Footwear Importers Inc.

Counsel for the Canadian Association of Footwear Importers Inc. (CAFI) argued that the findings should be rescinded on the basis that there is no likelihood of resumed dumping and that there is no likelihood of material injury to domestic production. Counsel submitted that the evidence shows that there are four classes of like goods, namely, leather shoes, non-leather shoes, leather boots and non-leather boots.

Counsel for CAFI argued that the Tribunal should not rely on enforcement data and dumping margins of the Department of National Revenue (Revenue Canada) to find that there is a likelihood of resumed dumping because this evidence is based on advance factors which have not been updated recently. Counsel also argued that the domestic industry presented no hard evidence to support allegations of import competition from the subject countries. Counsel stressed the need for imported product in the marketplace, since domestic producers cannot and do not supply the range of footwear in terms of price, value and style demanded by Canadian women.

Referring to the shoe industry, counsel for CAFI noted that there have been significant changes over the past five years. The industry has rationalized its operations and has focused on developing brands and product niches. Further, the production of shoes declined substantially during the review period. Counsel submitted that the poor performance of the shoe industry, and any potential future injury to it, is attributable to non-dumping factors, such as the recession, imports by producers, comparative disadvantage, increases in raw material prices, lack of marketing initiatives, an inability to develop fashion lines, the use of imported uppers in shoe production, corporate management difficulties and the movements in exchange rates of the early 1990s, the latter of which created substantial cross-border shopping.

Concerning leather shoes, counsel for CAFI argued that witnesses for the domestic industry did not provide any real evidence to support their assertion that they would be materially injured should the findings be rescinded. Counsel noted that Brown Shoe, the largest producer of women's leather shoes in Canada, has found a market niche for domestically produced brands which are not affected by imports from the subject countries. Counsel argued that leather shoes imported from Brazil cannot be produced in Canada and that the demand for these products has remained constant. Counsel also noted that domestic producers are importing

leather shoes, most of which have higher average price points than the leather shoes produced domestically. Counsel mentioned that China can offer footwear at low prices because of the great comparative advantages flowing from economies of scale, such as material sourcing and costs, productivity and lower labour costs. Counsel noted that imports from Taiwan have decreased substantially over the review period. Prices in this country have increased, the Taiwanese currency has been strong and landed prices have increased, causing many owners to close their factories and sell their land.

Concerning non-leather shoes, counsel for CAFI submitted that the volume of domestic production should be considered *de minimis*. Tender Tootsies Ltd., which was the only producer of non-leather shoes in Canada, is now concentrating its efforts on boot production. According to counsel, Radius Footwear Inc. is essentially an assembler of non-leather products and should not be considered a domestic producer of like goods. Counsel noted that, despite the protection afforded by anti-dumping duties, imports of non-leather shoes from China have increased. This clearly indicates that these shoes are filling a market niche that has been virtually abandoned by domestic producers. Furthermore, imports of non-leather shoes from Taiwan have decreased substantially over the review period. As such, counsel argued that there is no threat of material injury to domestic production of non-leather shoes from these two countries.

Turning to boots, counsel for CAFI argued that, although production declined slightly during the review period, the domestic boot industry appears to have benefited from the findings. Counsel noted that boot production increased by 19 percent in the first nine months of 1994, compared to the same period a year earlier. In addition, more people were employed directly in boot production, and the utilization rate of plant machinery showed healthy increases. Furthermore, in the face of constant levels of imports from subject and non-subject countries, the domestic industry has increased its exports significantly, particularly to the United States. As such, domestic producers are succeeding in a largely unprotected market, where most exports to the United States enter at a tariff rate of less than 10 percent.

With respect to leather boots, counsel for CAFI argued that the domestic industry failed to provide evidence that it is being injured by imports. On the contrary, counsel submitted that the evidence shows that the domestic industry is thriving, developing new markets, increasing exports, investing in new technology and increasing employment. Counsel also argued that imports do not compete with domestic production since, for the most part, imported leather boots are either low-cost products coming from China or higher-priced fashionable leather boots coming from Brazil, neither of which are warm-lined or guaranteed as waterproof. Counsel also noted that imports of boots from Taiwan have decreased substantially. There was also no concern expressed concerning imports from Poland, Romania and the former Yugoslavia.

With respect to non-leather boots, counsel for CAFI noted that imports from China do not pose a threat of injury to domestic production because they are primarily low-priced, non-waterproof products. As such, they do not compete with the domestic industry's products.

Retail Council Footwear Committee

Counsel for the Retail Council Footwear Committee (the RCFC) argued that the findings should be rescinded. According to counsel, SMAC is not truly representative of domestic producers of women's footwear. Counsel noted that many of the responses to the Tribunal's manufacturer's review questionnaire were incomplete. Furthermore, only six producers were present at the hearing. The vulnerability test is not met unless SMAC shows that it constitutes the domestic industry in each subcategory of like goods.

Counsel for the RCFC submitted that it is unreasonable to subject retailers, and ultimately their customers, to anti-dumping control when they have to meet approximately 90 percent of their needs outside of Canada. Rather than increase their production of shoes, domestic producers have used the anti-dumping protection to get out of shoe production and, in a number of cases, to switch to boot production or to imports. Consequently, they have been increasingly incapable of satisfying the needs of retailers.

Counsel for the RCFC also submitted that, despite a 23 percent country advance factor for China and other advance factors for other countries, domestic producers have not benefited from the injury findings. Counsel argued that this advance factor did not take into account the low cost of production in China and, as such, was set arbitrarily high. The propensity to dump by China must, therefore, be determined in light of this evidence. Counsel argued that inflation has already been factored into the prices of Chinese goods, since they are being quoted in U.S. dollars. Furthermore, the rise in prices of imports of uppers from China indicates that Chinese exporters willingly charge what they can get. Accordingly, the situation should be no different for footwear sold in a small market like Canada. Counsel argued that there is no evidence that China would take the trouble to get into the production of waterproof leather footwear because of the small size of the Canadian market. Furthermore, witnesses for the RCFC stated that it would be impractical to purchase an untested product which offers no recourse if unsatisfied customers return it. Counsel mentioned that there has been no anti-dumping action taken in the United States, which is the target market of most major producing countries.

According to counsel for the RCFC, there is no likelihood of material injury in the event that the findings are rescinded. Counsel explained that retailers are required to have an adequate supply of footwear to meet the needs of Canadian women. If retailers prosper as businesses, the financial fortunes of their suppliers, including domestic producers, will be enhanced. Retailers must procure an enormous range of products each season, much of which is not available from domestic production. Counsel submitted that both retailers and suppliers must adjust to various factors, including a variety of products, styles and prices, U.S. retail pricing and cross-border shopping.

Counsel for the RCFC argued that, since 1990, factors such as the recession, the Goods and Services Tax, the provincial sales tax and anti-dumping duties, much of which are imposed on footwear not available from Canadian sources, have made it difficult for both retailers and domestic producers. Counsel stressed the importance of brands and noted that, despite its relatively high price, the Naturalizer brand produced by Brown Shoe continues to enjoy success in the marketplace. Price setting and sourcing strategies are also important factors.

Counsel for the RCFC disagreed with the notion put forward by the domestic industry to the effect that the continued protection of footwear was necessary for the enhancement of the production of boots. A number of firms only produce boots and do so successfully. Counsel argued that the Tribunal cannot measure the likely effects of imported shoes, without anti-dumping protection, on domestic production of boots, since they are not like goods. Finally, counsel noted that the problems experienced by producers of shoes were unrelated to factors such as import competition, since the producers of boots have succeeded in the same environment.

Counsel for the RCFC argued that domestic producers of boots have been able to compete successfully in the United States, where tariff protection is less than 10.0 percent, compared to about 22.5 percent in Canada. The highly desirable nature of the domestic product and the currency advantage

have also contributed to this success. Counsel noted that the greatest growth in the boot sector has been in the last two years, when the Canadian dollar was at its weakest, and that domestic producers have made a real effort to succeed in the U.S. market.

Counsel for the RCFC submitted that there is virtually no direct competition between imports and footwear produced in Canada, because of category, style and price point. Retailers are driven to purchase imported product or to import footwear themselves due to inadequacy of supply. Moreover, the footwear industry's claim that it needs a domestic base from which to be able to successfully export is irrelevant, because the issue before the Tribunal is whether production in Canada, not exports, is affected by imports. Counsel submitted that there is no evidence of actual or potential injury to domestic production of boots for consumption in Canada.

In conclusion, counsel for the RCFC noted that footwear is a demand driven product and that retailers are facing a supply driven attitude by domestic producers. Manufacturers must adjust to the realities of the marketplace. Those that have succeeded have done so in a manner that makes them ready to meet the future without further protection. Counsel requested that the findings be rescinded so as to put less pressure on retailers, which, in turn, would put less pressure on suppliers, both foreign and domestic, thereby giving everybody more breathing room to make more profits.

ABICALÇADOS

Counsel for ABICALÇADOS stated that the findings with respect to Brazil have outlived their original purpose and should be rescinded. Counsel argued that Brazilian subsidy programs have been terminated. They remain in effect only for a few producers that have been grandfathered. Therefore, subsidies are no longer a feature of Brazilian economic policy. As such, there is no propensity to subsidize on the part of Brazil. Counsel argued that Brazil had no choice but to pay anti-dumping duties because Revenue Canada did not provide normal values on which exporters could base their pricing in order to eliminate any dumping margins. The Tribunal should, therefore, not rely on this evidence. Counsel noted that Brazil, unlike China, is not the subject of any trade actions in either New Zealand, the European Community or Mexico. Furthermore, Brazil has not increased its exports of non-subject boots, even though access to Canada was unrestrained by anti-dumping duties. As such, counsel argued that there is no propensity to dump on the part of Brazil.

Counsel for ABICALÇADOS noted that Brazilians do not produce waterproof winter boots. Counsel referred to the testimony of a witness for Brown Shoe who testified that Brazil is presently facing certain economic difficulties, for example, a high inflation rate, a currency that is higher than the U.S. dollar and increasing production costs. Furthermore, the witness for Brown Shoe testified that there is a rising demand in Brazil for the subject goods and that Canada is not a primary market for Brazilian exports. Counsel also referred to the testimony of the witness for Nine West Canada, a division of The Best Shoe Company Ltd., who testified that production in Brazil has fallen in the last two years. In fact, there were 52 closures of Brazilian factories. Furthermore, the witness for Nine West Canada, a division of The Best Shoe Company Ltd., testified that Brazil has made strong inroads on the European market, that Brazilian shoes are often more expensive than Italian shoes and that orders from Canada are generally minimal. Finally, counsel referred to the testimony of a witness for M & M Trading Inc. who testified that there have been substantial price increases in Brazil. On the basis of this evidence, counsel argued that it is unlikely that imports from Brazil would cause material injury to domestic production if the findings were rescinded.

Reebok Canada Inc. and Nike Canada Ltd.

Counsel for Reebok Canada Inc. (Reebok) and counsel for Nike Canada Ltd. (Nike) made it clear that they support a rescission of the findings. However, in the event that the Tribunal decides to continue the findings, they requested an exclusion for aerobic, fitness walking, run/walk and basketball shoes, on the basis that these goods are not produced in Canada and that, as such, there could be no possible injury to domestic production of like goods. The positions of these two companies are dealt with in detail under the heading "Requests for Exclusions."

Cole•Haan

In the event that the Tribunal decides to continue the findings, counsel for Cole•Haan requested that Cole•Haan branded women's footwear be excluded on the basis that it is not produced in Canada and that it does not compete in the same market. Counsel noted that SMAC's proposal for exclusions based on certain price points would cover all the shoes imported by Cole•Haan. Counsel submitted that the boots produced in Brazil are a particular type of artisan-crafted product which makes them different from boots produced in Canada. Cole•Haan boots also have a higher price point. As such, counsel argued that Cole•Haan boots are not substitutable for boots produced in Canada.

Poland and Skorimpex Foreign Trade Company Ltd.

The representative of the Trade Commissioner's Office of the Republic of Poland in Canada argued that Poland should be excluded from any continuation of the findings on leather boots. He noted that there have been no exports of women's leather boots to Canada since 1991 and that domestic demand for footwear has increased dramatically. He explained that Poland is targeting its footwear exports towards the European Community, as all exports of Polish shoes to the European Community are unlimited and free of customs duties as of January 1, 1995. Skorimpex Foreign Trade Company Ltd. filed written submissions with the Tribunal which support the Polish position.

ECONOMIC INDICATORS

Women's Boots

Key economic indicators for women's boots are summarized in the following table.

ECONOMIC INDICATORS
WOMEN'S BOOTS

	1990	1991	1992	1993	Jan.-Sept. 1993	Jan.-Sept. 1994
Production (000 pairs)	3,726	3,455	3,346	3,063	2,408	2,857
Imports (000 pairs)	1,757	2,038	2,223	2,826	2,401	2,358
Subject Countries	643	924	985	1,514	1,380	1,319
Non-Subject Countries	1,114	1,115	1,237	1,312	1,022	1,039
Apparent Market						
Volume (000 pairs)	5,181	6,037	5,435	5,546	4,563	4,680
Percent Increase (decrease)	N/A	16.5	(10.0)	2.0	N/A	2.6
Value ($000)	173,343	185,353	158,386	161,977	125,604	138,227
Percent Increase (decrease)	N/A	6.9	(14.5)	2.3	N/A	10.0
Market Share (%)						
Producers - Production	67	65	58	49	47	49
Producers - Imports	0	0	0	1	1	0
Importers - Subject Countries	12	15	18	26	30	28
Importers - Non-Subject Countries	21	19	23	24	22	22
Average Prices						
Domestic - Production ($/pair)	34.1	34.1	32.4	32.4	30.3	33.1
Domestic - Imports ($/pair)	N/A	N/A	30.6	32.4	32.4	37.1
Imports - Subject Countries - Wholesale[1] ($/pair)	21.4	14.6	14.5	15.7	15.3	15.4
Imports - Subject Countries - Landed Value[2] ($/pair)	24.9	23.2	19.8	20.7	20.5	18.9
Export Sales (000 pairs)	126	180	185	343	224	455
Net Income Before Taxes						
Value ($000)	1,171	1,036	1,163	1,060	1,003	1,174
Percent of Net Sales[3]	4.0	3.0	4.0	4.0	5.0	6.0
Capacity[4] (000 pairs)	10,218	10,650	10,508	9,701	7,527	7,550
Utilization Rate (%)	18	16	17	19	20	25

Notes:
Figures may not add up due to rounding.
N/A = Not applicable.
1. Reported by importers-wholesalers.
2. Reported by importers-retailers.
3. These numbers do not reflect financial data received from La Botterie Kamouraska Inc. and Les Chaussures Régence inc. during the hearing. The addition of this information results in minor changes to net income before taxes expressed as a percentage of net sales.
4. Represents total plant capacity for boots, shoes and other products by reporting producers.

Source: Replies to Tribunal review questionnaires.

Production of women's boots declined by 18 percent over the 1990-93 period, but increased in the first nine months of 1994 over the corresponding period of 1993. Exports of women's boots accounted for 3 percent of production in 1990, 11 percent in 1993 and 16 percent in the first nine months of 1994.

Imports from the subject countries more than doubled over the 1990-93 period, but declined slightly in the first nine months of 1994. China accounted for all of the increase in the subject imports from 1990 to 1993. For all other subject countries, the volume of imports fell between 1990 and 1993. For the first nine months of 1994, imports from Brazil and Taiwan rose, while imports from China fell.

Although the apparent market fluctuated over the period, it was larger in 1993 than in 1990 by 365,000 pairs. The market continued to grow in the first nine months of 1994. The producers' market share from production declined from 67 percent in 1990 to 49 percent in 1993. The producers' market share from imports accounted for 1 percent of the market in 1993. The subject imports accounted for the greater portion of the producers' lost market share. The importers' market share from the subject countries increased from 12 percent in 1990 to 26 percent in 1993. The importers' market share from non-subject countries also increased, from 21 percent in 1990 to 24 percent in 1993.

The average wholesale selling price for domestic production was lower in 1993 than in 1990. The average price increased in the first nine months of 1994 over the corresponding period of 1993. Average wholesale selling prices and average landed prices for the importers' subject imports were lower than domestic prices from domestic production. The import prices were lower in 1993 than in 1990.

Net income before taxes, expressed as a percentage of net sales, varied from 3 to 4 percent over the 1990-93 period. Net income before taxes for the first nine months of 1994 was 6 percent. Plant utilization for boots improved over the review period.

Women's Shoes

Key economic indicators for women's shoes are summarized in the following table.

ECONOMIC INDICATORS
WOMEN'S SHOES

	1990	1991	1992	1993	Jan.-Sept. 1993	Jan.-Sept. 1994
Production (000 pairs)	4,663	4,019	2,914	2,684	2,059	1,855
Imports (000 pairs)	12,572	13,917	15,648	17,569	15,586	15,974
Subject Countries	7,956	8,347	8,902	10,013	9,008	8,926
Non-Subject Countries	4,616	5,570	6,746	7,556	6,578	7,048
Apparent Market[1]						
Volume (000 pairs)	17,008	17,783	18,413	19,916	17,268	17,512
Percent Increase (decrease)	N/A	4.6	3.5	8.2	N/A	1.4
Value ($000)	370,475	382,920	364,823	410,869	341,594	346,914
Percent Increase (decrease)	N/A	3.4	(4.7)	12.6	N/A	1.6
Market Share (%)						
Producers - Production	26	21	16	13	12	11
Producers - Imports	1	2	3	4	4	5
Importers - Subject Countries	45	46	46	48	50	49
Importers - Non-Subject Countries	27	31	35	35	35	36
Average Prices						
Domestic - Production ($/pair)	24.2	24.0	25.1	27.2	26.4	26.5
Domestic - Imports ($/pair)	21.4	19.9	21.8	18.9	18.5	18.1
Imports - Subject Countries - Wholesale[2] ($/pair)	18.1	19.6	17.0	16.0	15.3	16.6
Imports - Subject Countries - Landed Value[3] ($/pair)	12.4	13.8	14.3	16.2	16.6	15.2
Net Income Before Taxes						
Value ($000)	3,664	2,684	1,400	3,134	1,694	2,032
Percent of Net Sales	6.0	5.0	3.0	8.0	6.0	8.0
Capacity[4] (000 pairs)	10,218	10,650	10,508	9,701	7,527	7,550
Utilization Rate (%)	30	26	20	20	20	17

Notes:
Figures may not add up due to rounding.
N/A = Not applicable.
1. Figures for 1990 and 1991 were revised due to late filings by M & M Trading Inc.
2. Reported by importers-wholesalers.
3. Reported by importers-retailers.
4. Represents total plant capacity for boots, shoes and other products by reporting producers.

Source: Replies to Tribunal review questionnaires.

Production of women's shoes declined by 42 percent over the 1990-93 period. The decline continued in the first nine months of 1994 over the corresponding period of 1993. No exports of women's shoes were reported until the first nine months of 1994.

Imports from the subject countries increased by 26 percent over the 1990-93 period, but declined slightly in the first nine months of 1994. China and, to a lesser extent, Brazil accounted for the increase in subject imports from 1990 to 1993. For Taiwan, the volume of imports fell between 1990 and 1993. For the first nine months of 1994, imports from China and Brazil rose, and imports from Taiwan fell.

The apparent market rose every year between 1990 and 1993 and was larger in 1993 than in 1990 by 2.9 million pairs. The market continued to grow in the first nine months of 1994. The producers' market share from production declined from 26 percent in 1990 to 13 percent in 1993. The producers' market share from imports accounted for 4 percent of the market in 1993. The importers' market share from the subject countries increased from 45 percent in 1990 to 48 percent in 1993. During the same period, the importers' market share from non-subject countries increased from 27 to 35 percent.

The average wholesale selling price for domestic production was higher in 1993 than in 1990. The average price was about the same in the first nine months of 1994 compared to the corresponding period of 1993. Average wholesale selling prices and average landed prices for the importers' subject imports were lower than domestic prices from domestic production. The average wholesale selling price was lower in 1993 than in 1990. The average landed price was higher in 1993 than in 1990.

Net income before taxes, expressed as a percentage of net sales, varied from 3 to 8 percent over the 1990-93 period. For the first nine months of 1994, net income before taxes was 8 percent. Plant utilization for shoes declined over the review period.

PRELIMINARY MATTER

At the pre-hearing conference in this case, counsel for the RCFC requested an order that SMAC officials be required to identify specific support, within the association's membership, for and against the continuation of the findings. In the Tribunal's view, this request raised the issue of SMAC's standing in this review, as well as certain evidentiary issues. With respect to the issue of standing, the Tribunal notes that subsection 76(2) of SIMA provides that "the Tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding." In this case, the review was initiated on the basis of the Tribunal's decision that a review was warranted. In other words, there is no "complainant" in a review, as there is in an inquiry conducted pursuant to section 42 of SIMA, and, therefore, there is no "issue of standing" per se. However, the Tribunal is aware that it must take into account paragraph 1 of Article 4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*[8] (the Anti-Dumping Code) and paragraph 7 of Article 6 of the *Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade*[9] (the Subsidies Code) in identifying the domestic industry in each class of like goods in order to conduct its analysis of likelihood of resumed dumping and likelihood of material injury. The number of SMAC members appearing at the hearing is not a relevant consideration in determining this issue. Rather, it

8. Geneva, March 1980, GATT BISD, 26th Supp. at 171.
9. *Ibid*. at 56.

is relevant to the weight to be attributed to the evidence presented on behalf of the domestic industry. The Tribunal further addresses the issue of "domestic industry" in the reasons below.

REASONS FOR DECISION

In determining whether a finding should be continued, the Tribunal must be satisfied first that there is a likelihood of resumed dumping and/or subsidizing from the subject countries, if the finding is rescinded. Second, the Tribunal must be able to conclude that the resumption of dumping and/or subsidizing is likely to cause material injury to a domestic industry.

In this case, there are two preliminary issues that the Tribunal must address before answering these two questions. First, the Tribunal must determine how many product classes of like goods are involved in the present review. Second, the Tribunal must identify the domestic producers of each of the classes of like goods.

Like Goods

As in the 1990 inquiry, the question of how many product classes of like goods are involved arose in this review. In the 1990 inquiry, the Tribunal determined that there were two classes of like goods, namely, women's leather and non-leather boots, and women's leather and non-leather shoes. In the present case, the Tribunal ruled at the pre-hearing conference, as it did in the 1990 inquiry, that it was prepared to receive evidence on the basis of four possible classes of like goods, namely, leather boots, non-leather boots, leather shoes and non-leather shoes. The Tribunal reserved the right to regroup some or all of these classes for purposes of its decision, depending on the evidence presented. The Tribunal recognizes that, if it finds that there is more than one class of like goods, it must conduct separate investigations and make an order with respect to each class.

In determining whether there is more than one class of like goods, the Tribunal typically considers the characteristics of the goods, including their physical characteristics and market considerations, such as end use, substitutability, pricing, distribution channels and whether the goods fulfill the same customer needs.[10]

In the 1990 inquiry, the Tribunal found that boots and shoes were not like goods. In the Tribunal's view, they did not share the same physical characteristics and design, and there were differences in the production processes of boots and shoes. Furthermore, the selling patterns and specific end uses desired by consumers of boots were different from those desired by consumers of shoes. The Tribunal found, however, that leather and non-leather footwear were like goods. In the Tribunal's view, the physical appearance, design and fashion of leather and non-leather footwear were very similar. Furthermore, prices of leather and non-leather footwear overlapped, although non-leather footwear was predominantly at the low end of the price spectrum, and leather footwear was predominantly at the high end. Although it received conflicting evidence on the issue of substitutability, the Tribunal concluded that consumers generally use leather and non-leather footwear interchangeably and that this substitution was particularly evident at the low end of the price spectrum.

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10. See, for example, *Sarco Canada Limited v. The Anti-dumping Tribunal*, [1979] 1 F.C. 247.

For reasons similar to those adopted in the 1990 findings, the Tribunal finds that boots and shoes are not like goods. The evidence shows that boots and shoes are fundamentally different in physical characteristics, design, selling patterns and end uses. Although counsel for SMAC argued that "the indistinguishability of boots and shoes has intensified" as a result of the continued development of "pant boots" or "booties," the Tribunal still cannot find that boots and shoes are like goods.

Also for reasons similar to those adopted in the 1990 findings, the Tribunal finds that leather and non-leather footwear are like goods. The evidence shows that the physical appearance, design and fashion of leather and non-leather footwear are very similar. The evidence also shows that the prices of leather and non-leather footwear often overlap, although leather footwear tends to dominate the high end of the price spectrum, while non-leather footwear dominates the low end.

The Tribunal received conflicting evidence as to whether consumers generally perceive leather and non-leather footwear as being substitutes. For example, a witness for the domestic industry indicated that there has been frequent switching in retail merchandising between leather and non-leather footwear, particularly at moderate price point levels and that excellent man-made materials are being substituted for leather as leather prices increase.[11] A witness for CAFI testified that a same shoe, that is, a shoe of the same colour and styling, can be produced in either leather or non-leather, depending at what price the shoe is intended to be sold.[12]

Mr. Thomas K. Gussman, who testified as an expert witness in consumer research for CAFI, explained the results of a focus group study and of mall surveys conducted to determine the importance of such factors as the choice of material in a consumer's decision to purchase footwear. Mr. Gussman testified that the focus group study revealed that, depending on the perceived end use, the consumer might distinguish between leather and non-leather footwear. He indicated that approximately 90 percent of the respondents to the mall surveys identified material as one of the factors that was somewhat or very important in their purchase decision. On this basis, Mr. Gussman testified that leather and non-leather footwear could not be considered substitutable. The Tribunal notes that the mall surveys also revealed that approximately the same number of respondents who identified material as somewhat or very important also identified factors such as durability, style, price and colour as somewhat or very important in their purchase decision.[13] Furthermore, the mall surveys showed that, at lower prices, the importance of material decreased.[14]

In the Tribunal's view, there exists a range of factors that come into play in the decision to purchase footwear. It is not simply a question of whether to buy leather or non-leather. In fact, Mr. Gussman testified that the decision to purchase footwear is not unidimensional.[15] Thus, as in the 1990 findings, the Tribunal finds that consumers generally use leather and non-leather footwear interchangeably and that this substitution is particularly evident at the lower price ranges. Indeed, the Tribunal notes that it carefully examined the physical exhibits that were introduced into evidence and that it had difficulty distinguishing between high-quality leather footwear and non-leather footwear.

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11. Manufacturer's Exhibit F-1, Administrative Record, Vol. 7.
12. Transcript of Public Hearing, Vol. 7, March 7, 1995, at 1307-8.
13. Importer's Exhibit H-2B, Administrative Record, Vol. 9.
14. *Ibid*.
15. Transcript of Public Hearing, Vol. 7, March 7, 1995, at 1354.

In sum, the Tribunal concludes that the present review involves two classes of like goods, namely, women's leather and non-leather boots and women's leather and non-leather shoes, and that the question of whether there is a likelihood of resumed dumping and/or subsidizing from the subject countries, if the findings are rescinded, and the question of whether the resumption of such dumping and/or subsidizing is likely to cause material injury to a domestic industry must be considered separately for each class.

Domestic Industry

Having found that there are two classes of like goods, the Tribunal must identify the domestic producers that make up the domestic industry in each of these classes. Subsection 42(3) of SIMA provides that, in considering any question relating to the production in Canada of like goods, the Tribunal must take fully into account the provisions of paragraph 1 of Article 4 of the Anti-Dumping Code in a dumping case and paragraph 7 of Article 6 of the Subsidies Code in a subsidy case. Paragraph 1 of Article 4 of the Anti-Dumping Code reads, in part, as follows:[16]

> *In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that*
>
> *(i) when producers are related ... to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers.*

Counsel for CAFI and counsel for the RCFC raised two issues with the Tribunal with respect to the application of subsection 42(3) of SIMA in this review: (1) whether domestic producers, that are importers of the subject goods, should be excluded from any definition of "domestic industry;" and (2) whether the production of like goods from importers' uppers constitutes production in Canada of like goods.

The Tribunal notes that, while it must take into account paragraph 1 of Article 4 of the Anti-Dumping Code in defining "domestic industry," the word "may" in paragraph 1(i) indicates that it is within the Tribunal's discretion to exclude from the definition of "domestic industry" those producers that are related to the exporters or importers or that are themselves importers of the allegedly dumped product.

16. The relevant portions of paragraph 5 of Article 6 of the Subsidies Code read essentially the same.

The Tribunal and its predecessors have refused to exercise their discretion in favour of such exclusions when to do so would effectively deny the existence of a domestic industry.[17] Furthermore, in Inquiry No. NQ-93-006,[18] the Tribunal concluded that it would be inappropriate to exclude producers that imported dumped goods where they imported these goods as a defensive response to the low-priced imports and where their imports represented only a small proportion of the domestic industry's total sales.[19]

With respect to boots, the Tribunal notes that total sales from imports of the subject goods from the subject countries by domestic producers represented less than 2 percent of domestic producers' total sales and only 3 percent of total sales from imports of the subject boots in 1993.[20] In the Tribunal's view, such volumes are not significant. The Tribunal, therefore, finds that there is no compelling reason for excluding any of the domestic producers from the definition of "domestic industry" for boots.

Turning to shoes, the Tribunal notes that total sales from imports of the subject goods from the subject countries by domestic producers represented less than 13.0 percent of domestic producers' total sales and less than 4.5 percent of total sales from imports of the subject shoes in 1993.[21] The Tribunal also finds that these volumes are not significant. In addition, the evidence shows that Brown Shoe imports the subject shoes to complement its Naturalizer line and, in part, to defend its position in the marketplace against other imported lines.[22] With respect to Tender Tootsies Ltd., the evidence shows that it began importing shoes at about the time of 1990 findings, in part for defensive reasons related to the subject imports from China. Further, these imports are, for the most part, directed at a particular market segment in which there is almost

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17. See, for example, *Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America and Produced by or on Behalf of Elkhart Products Corporation, Elkhart, Indiana, Nibco Inc., Elkhart, Indiana, and Mueller Industries, Inc., Wichita, Kansas, their Successors and Assigns*, Canadian International Trade Tribunal, Inquiry No. NQ-93-001, Finding and Statement of Reasons, October 18, 1993; *Gasoline Powered Chain Saws Originating in or Exported from the Federal Republic of Germany, Sweden and the United States of America*, Canadian Import Tribunal, Inquiry No. CIT-2-87, Finding, July 3, 1987, Statement of Reasons, July 17, 1987; and *Bottoming Materials of Natural and/or Synthetic Rubber Composition Produced or Exported by or on Behalf of Goodyear Tire and Rubber Company, Windsor, Vermont and American Biltrite Incorporated, Chelsea, Massachusetts for Use in the Footwear Repair Industry, Including but not Limited to Heels, Half Soles, Full Soles, Sports Soles, Soling Sheets (Commonly Referred to as Solid Slabs and Printed Slabs) and Toplifting*, Anti-dumping Tribunal, Inquiry No. ADT-7-82, Finding, September 27, 1982, Statement of Reasons, October 29, 1982.

18. *Black Granite Memorials of All Sizes and Shapes and Black Granite Slabs in Thicknesses Equal to or Greater Than Three Inches, Originating in or Exported from India*, Canadian International Trade Tribunal, Finding, July 20, 1994, Statement of Reasons, August 4, 1994.

19. *Ibid*. at 19.

20. Public Pre-Hearing Staff Report, revised February 25, 1995, Tribunal Exhibit RR-94-003-5B, Administrative Record, Vol. 1A at 0.282.6. The Tribunal notes that these figures and those cited for shoes include sales from a leading producer/importer that had ceased operations at the time of the Tribunal's review. This producer/importer was, in fact, the largest producer/importer of boots.

21. Public Pre-Hearing Staff Report, revised February 25, 1995, Tribunal Exhibit RR-94-003-5B, Administrative Record, Vol. 1A at 0.282.7.

22. Transcript of *In Camera* Hearing, Vol. 4, March 3, 1995, at 433-34; and Manufacturer's Exhibit G-39, Administrative Record, Vol. 8A.

no other competition from domestic production.[23] The Tribunal, therefore, finds that there is no compelling reason for excluding any of the domestic producers from the definition of "domestic industry" for shoes.

Counsel for CAFI submitted that the Tribunal should exclude from the definition of "domestic industry" those domestic producers, such as Les Chaussures Régence inc. and Radius Footwear Inc., that produce like goods from imported uppers because of the limited amount of value added in the production process in Canada. In support of their argument, counsel referred to the fact that footwear consisting of an imported upper does not benefit from tariff relief under the *North American Free Trade Agreement*[24] (NAFTA). Other counsel, including counsel for the RCFC, argued against this proposition. In support of their argument, they relied on previous decisions of the Tribunal.

The Tribunal and its predecessors, on many occasions, have considered that assembly of finished goods from imported components constitutes production in Canada.[25] Furthermore, the Tribunal notes that there is no requirement under any of its constituent legislation that it consider whether goods that are subject to an inquiry or a review can benefit from tariff relief under NAFTA. Notwithstanding this, the evidence shows that there is significant activity in Canada with respect to the production of shoes from imported uppers. As such, the Tribunal concludes that the production of like goods from imported uppers constitutes production in Canada.

As indicated at the hearing, in order to determine whether there is a likelihood of resumed dumping and/or subsidizing and a likelihood of material injury in the event that the findings are rescinded, the Tribunal took into account all domestic producers, not just SMAC members or SMAC members appearing at the hearing. More particularly, the Tribunal considered the issues of likelihood of resumed dumping and likelihood of material injury, first, with respect to all domestic producers of women's boots and, then, with respect to all domestic producers of women's shoes.

Likelihood of Resumed Dumping and/or Subsidizing—Boots

As there are several countries covered by the findings and given that the factors affecting exports of women's boots and the evidence filed were country-specific, the Tribunal has examined the likelihood of resumed dumping and/or subsidizing on a country-by-country basis.

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23. Transcript of Public Hearing, Vol. 3, March 1, 1995, at 600.
24. Done at Ottawa, Ontario, on December 11 and 17, 1992, at Mexico, D.F., on December 14 and 17, 1992, and at Washington, D.C., on December 8 and 17, 1992 (in force for Canada on January 1, 1994).
25. See, for example, *Colour Television Receiving Sets Originating in or Exported from the United States of America, Japan, Taiwan and Singapore, Having an Overall Diagonal Measurement Across the Picture Tube of Sixteen Inches and Over,* Anti-dumping Tribunal, Inquiry No. ADT-4-75, Finding and Statement of Reasons, October 29, 1975; and *Single Row Tapered Roller Bearings, Including Cups and Cone Assemblies, in the Sizes from 1.000 Inch (25.4 mm) up to and Including 6.625 Inches (168.275 mm) Outside Diameter, Originating in or Exported from Japan*, Canadian International Trade Tribunal, Inquiry No. NQ-91-007, Finding, July 9, 1992, Statement of Reasons, July 24, 1992.

China

In its 1990 findings respecting imports of women's boots, the Tribunal noted that Brazil, Poland and China were the three subject countries that experienced the most significant gains during the 1986-89 period, with China alone gaining 8 points of import share. The Tribunal was convinced that, although the subject countries may have had a comparative cost advantage, the rapid and dramatic market gains made by imports from the subject countries were only made possible by the significant margins of dumping and the amounts of subsidy found by the Deputy Minister.

The increase in the share of total imports held by China in the years preceding the findings has not only continued since the findings, but has accelerated. In fact, the import data show that, despite the imposition of anti-dumping advance factors[26] ranging from 17 to 29 percent on the export price,[27] imports of women's boots from China rose significantly over the 1990-93 period and captured 42 percent of all imports and 75 percent of imports from the subject countries in the first nine months of 1994.

The testimony of witnesses indicates that imports of women's boots and shoes from China have not only increased in terms of volume but also in terms of quality and range of goods offered. China has progressed from being a supplier of limited style, low-quality and generally low-priced boots and shoes to a producer of a wide range of styles with both leather and non-leather uppers of increasing quality.[28] Moreover, Chinese products, which previously competed in only the low-priced segment of the market, now compete more and more with domestic products in the medium-priced segment of the market.[29] In the view of one producer that testified at the hearing, China has become so dominant that it is crowding out other suppliers of imported products.[30] Industry witnesses stated that, as domestic producers, they had been approached by Chinese suppliers to sell finished footwear in Canada.

There was evidence as well that China, which already produces warm-lined boots, appears to be gearing up to produce waterproof leather winter boots, given recent large purchases of waterproof leathers and that it could master the waterproof leather process for winter boots in a matter of months.[31] Some witnesses also testified that, while the practice of copying products is widespread, China in particular has

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26. For countries with non-market economies, that is, China, Poland, Romania and the former Yugoslavia, country advance factors are applied against the F.O.B. value of the subject goods originating in a particular country. For countries with market economies, that is, Taiwan and Brazil, country advance factors are applicable only to exporters that have no company-specific advance factors or to the subject footwear shipped to Canada from a third country.
27. Covering the period from May 4, 1990, to date.
28. Transcript of Public Hearing, Vol. 3, March 1, 1995, at 446-47 and 572-73, Vol. 4, March 2, 1995, at 824-25, and Vol. 7, March 7, 1995, at 1300-1301.
29. Transcript of Public Hearing, Vol. 7, March 7, 1995, at 1302-3; and replies to the Tribunal's importer's review questionnaire. The exhibit, volume and page numbers are withheld to protect the confidentiality of the parties.
30. Transcript of Public Hearing, Vol. 4, March 2, 1995, at 699.
31. Transcript of Public Hearing, Vol. 3, March 1, 1995, at 446-47, and Vol. 6, March 6, 1995, at 1043 and 1150.

been very successful in copying and marketing domestic styles in a very short time.[32] In the Tribunal's view, the practice of copying specific domestic styles indicates that some Chinese factories are willing to produce the styles and the quantities required for the Canadian boot market.

In addressing the issue of likelihood of resumed dumping, the Tribunal often looks at the activities of foreign suppliers in markets other than Canada. The evidence in this case indicates that exports of Chinese women's boots and shoes are the subject of an anti-dumping action in Mexico,[33] while Chinese exports of women's shoes are the subject of an anti-dumping investigation in the European Community.[34]

Regarding the price levels of women's boots from China, the Tribunal notes that, while average wholesale selling prices of Chinese imports rose by an annual average of 5 percent over the 1990-93 period, Chinese average wholesale selling prices were among the lowest of any import source and were well below the domestic producers' average prices over this period. The Tribunal notes, however, that average prices are affected by product mix and may not represent the best indicator of actual price levels or trends over the period. In fact, given the evolution in the quality of boots exported to Canada since 1990, it would appear to the Tribunal that there has been very little increase in the actual price of boots of similar style and quality over this period.. In this regard, there was evidence that, despite an apparent inflation rate of some 25 percent in China over the past year, there was no indication of any commensurate rise in prices for Chinese boots.

One producer also testified that prices have not risen to any significant extent in recent years, even though China has been shipping much larger amounts of women's footwear to North America. He added that one would have expected that, given supply and demand factors, the shipping of increasing amounts of footwear would normally have caused prices to rise. The witness also stated that, in respect of the footwear industry, China has not, to this point, followed the normal pattern of economic evolution that causes prices to rise, which was experienced by countries such as Japan, Taiwan and the Republic of Korea.[35] The fact that prices have not risen more than they have suggests, in the Tribunal's view, that China has expanded its production capacity to produce more footwear or had untapped capacity reserves. Indeed, the pace at which Chinese imports of both leather and non-leather boots have been able to increase their participation in the Canadian market and the extent to which they have been able to do so is a clear indication of capacity and technology levels sufficient to rapidly flood a small market, such as Canada, with the subject footwear.

As an indication of China's enormous production capabilities, one producer indicated that China has taken only two years to become proficient at serving the North American market. China is such a major force that it has become the number one country in exports to North America.[36]

The Tribunal is convinced that, given the large increase in the volume and range of goods imported from China, the continued low prices at which the goods are being offered, the indication of dumping activities by China in other foreign markets and the enormous production capabilities of the Chinese footwear

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32. Transcript of Public Hearing, Vol. 2, February 28, 1995, at 321, Vol. 3, March 1, 1995, at 554-55; and Transcript of *In Camera* Hearing, Vol. 2, March 1, 1995, at 170-72 and 219-20.
33. Public Pre-Hearing Staff Report, revised March 3, 1995, Tribunal Exhibit RR-94-003-5B.2, Administrative Record, Vol. 1A at 0.282.66.
34. Tribunal Exhibit RR-94-003-56A, Administrative Record, Vol. 1A.1 at 27.
35. Transcript of Public Hearing, Vol. 4, March 2, 1995, at 698.
36. Transcript of Public Hearing, Vol. 3, March 1, 1995, at 571-72.

industry, there exists a likelihood of resumed dumping of women's leather and non-leather boots should the finding be rescinded.

Taiwan

The share of total imports held by Taiwan decreased substantially over the 1986-89 period, notwithstanding the fact that such imports were being dumped in the Canadian market. Since the findings, imports of boots from Taiwan declined by a further 35 percent over the 1990-93 period and remained low in the first nine months of 1994. Although a general advance factor of 50 percent has been in place since 1990, the evidence indicates that Revenue Canada has also calculated and applied company-specific rates in the case of Taiwan. The enforcement data show that the amount of anti-dumping duties collected over the last three years has averaged from 5 to 8 percent of the value for duty of the goods.

Turning to the evidence and testimony regarding imports from this source, the Tribunal notes that the industry's case made little mention of import competition from Taiwan. Further, witnesses for both sides testified to the dramatic changes that have taken place in Taiwan over the last five years. These changes include increasing prices in Taiwan,[37] the effects of the strong Taiwanese currency and the increase in land values which have caused many owners to close their factories and sell their land. There was also evidence of the transfer of some production facilities for footwear to lower-cost countries, particularly China. As a result, Taiwan is now viewed by some as uncompetitive in producing women's footwear. There are fewer factories producing footwear in Taiwan than there were at the time of the findings.

The Tribunal concludes that, given rising prices, a significant decrease in the import levels of boots since the findings and the structural changes to the Taiwanese footwear industry, there is no likelihood of resumed dumping of women's leather and non-leather boots from Taiwan in the event of a rescission and that the finding relating to women's leather and non-leather boots from this country should be rescinded.

Brazil

- Dumping

In the 1990 findings, the Tribunal observed that Brazil had gained 13 points of import share between 1986 and 1989. In 1989, Brazil was the second largest exporter of leather boots to Canada. This gain in market share was made possible by the significant margins of dumping found by the Deputy Minister.

Since the findings, Brazilian imports of leather boots decreased by about one third over the 1990-93 period, but recovered some of these losses in the first nine months of 1994. Although a general country advance factor of 45 percent has been in place since 1990, Revenue Canada has also calculated and applied company-specific factors in the case of Brazil. This is reflected in the enforcement data, which show that the anti-dumping duties collected on Brazilian footwear since the findings have averaged from 6 to 7 percent of the value for duty per year.

37. Transcript of Public Hearing, Vol. 3, March 1, 1995, at 572, and Vol. 4, March 2, 1995, at 698.

The Tribunal looked closely at the testimony of witnesses concerning factors influencing the likely behaviour of Brazilian suppliers in the event of a rescission of the finding. According to several witnesses, including the witness for a major domestic producer, Brazil is currently facing a number of problems, including a high inflation rate, a currency that has become higher-priced than the U.S. dollar, and rising production costs and selling prices.[38] As well, it is noted that there is a rising demand in Brazil for footwear and that Canada is not a primary target for exports from Brazil. On this latter point, the practice of "piggybacking" is said to be widespread in the importing community. This means that Canadian orders are almost always linked to production runs of styles produced for the major markets, notably the United States. The Tribunal heard evidence that, because of the nature of Brazilian production, the Canadian market is too small to have dedicated factories or distinct production runs in that country.

The Tribunal did not find persuasive the evidence relating to the degree of import competition from Brazilian boots since the findings. The evidence indicates that the boots imported from Brazil are fashion, unlined boots not serving the same markets as the warm-lined winter boots made by domestic producers. There was no evidence of Brazil purchasing waterproof leathers for the purpose of making waterproof leather winter boots. The Tribunal further notes that the industry's case against Brazil consisted of allegations of a potential threat, although none of the witnesses for SMAC testified to any serious level of competition from Brazil since the findings.

For these reasons, the Tribunal finds that there is no likelihood of resumed dumping of leather boots from Brazil should the finding be rescinded and that the finding relating to leather boots from Brazil should be rescinded.

- Subsidizing

In the 1990 finding regarding subsidized imports of leather boots from Brazil, the Tribunal noted that the weighted amount of subsidy was 6.05 percent in 1988 and 3.50 percent in 1989. The Tribunal noted that the subsidy programs were, however, in the process of being phased out by the Brazilian government and that, in the event that the programs were to be eliminated and the subsidies were at a significantly lower level, it would have been prepared to reconsider its finding of material injury caused by subsidized imports from Brazil.

The evidence today indicates that there remain only a few footwear producers that have been grandfathered for the pre-existing plans under the BEFIEX and income tax exemption for export earnings programs.[39] The Tribunal also notes that counsel for SMAC agreed with other counsel's suggestion that the subsidy was only a small feature of Revenue Canada's 1990 investigation. Given the elimination of the subsidy programs for new Brazilian producers, the limited scope of existing beneficiaries, the small size of the actual subsidies still in place and the lack of any evidence that new subsidy programs are likely to be created by the Brazilian government, the Tribunal is of the view that there is no likelihood of material injury

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38. Transcript of Public Hearing, Vol. 4, March 2, 1995, at 825.

39. The company-specific advance factor for Brazilian producers benefiting from these programs reflects both anti-dumping and countervailing duties. However, in the case where the subject goods were dumped and subsidized, part of the margin of dumping was attributable to the benefits earned from the income tax exemption for export earnings; therefore, these benefits were not added to the advance factors because it would have resulted in double counting.

to domestic production of like goods from this limited amount of subsidizing. Therefore, the Tribunal rescinds its finding concerning subsidized imports of leather boots from Brazil.

Poland

The 1990 finding against Poland covers only leather boots. In its finding, the Tribunal observed that Poland had gained 14 points of import share in the 1986-89 period. In 1989, Poland was the largest exporter of leather boots to Canada.

The situation regarding Polish imports has changed significantly since the finding. Polish imports dropped immediately after the finding and have remained at negligible levels since that time. According to the evidence filed, demand for footwear has been dramatically increasing in Poland. As well, Poland is targeting its footwear exports towards the European Community, given that all its exports of footwear to the European Community are unrestricted and free of customs duties as of January 1, 1995. Given these considerations, the Tribunal finds it unlikely that Polish imports of leather boots will be dumped in Canada should the finding be rescinded. Accordingly, the Tribunal concludes that the finding on leather boots from Poland should be rescinded.

Romania and the Former Yugoslavia

In its 1990 finding regarding leather boots from Romania and the former Yugoslavia, the Tribunal observed that the share of imports held by these two countries had remained at or below 5 percent in the years leading to the finding. The Tribunal recognized at that time that Romania and the former Yugoslavia had exported much lower volumes than the other subject countries. However, it noted that the volumes imported from these countries were not insignificant and that, combined with the high margins of dumping found by the Deputy Minister, these imports had contributed to the plight of the domestic boot industry.

Since the finding, imports from Romania and the former Yugoslavia have been virtually absent from the Canadian marketplace. Moreover, the Tribunal notes that none of the domestic producers expressed any concerns regarding resumed dumping of imports of leather boots from Romania or the former Yugoslavia. For these reasons, the Tribunal finds that a continuation of the finding against Romania and the former Yugoslavia is not warranted and that the finding covering leather boots from these countries should, therefore, be rescinded.

Likelihood of Material Injury—Boots

Having found that there exists a likelihood of resumed dumping of women's leather and non-leather boots from China, the Tribunal examined whether the domestic industry is likely to be injured following a rescission of the finding respecting this country. In considering this question, the Tribunal examined the industry's performance and market developments since the finding.

The Tribunal is of the view that the findings on boots have had beneficial effects on domestic producers. Although there have been some factory closures, most of these took place in the aftermath of the dumping in 1990 and as a result of the closure of retail organizations caused by the recent recession. While production decreased by an average annual rate of 6.3 percent over the 1990-93 period, it showed signs of recovery in the first nine months of 1994. The findings have also provided the domestic industry with the

stability necessary to invest in new production machinery and equipment and permitted the creation of new firms, such as La Botterie Kamouraska Inc.

In terms of market share, the domestic producers' share from domestic production has declined by 18 points since the findings, with imports from the subject countries, particularly China, capturing a majority of these gains. Although the producers' average unit selling price for boots declined somewhat over the 1990-93 period, the consolidated income statement for boot producers shows that profits remained relatively stable, at 3 to 4 percent of sales. The Tribunal considers that the strong increase in export sales has had a beneficial effect on the bottom line for domestic sales of boots, in terms of spreading fixed costs over a broader base.

Against this background, the Tribunal focused on the likely effects of rescinding the finding with regard to China. Notwithstanding the domestic industry's efforts to improve its competitive position and the moderate profitability reported by domestic producers, the Tribunal is convinced that, if the finding were rescinded, dumped imports from China would have a negative effect on domestic production. The Tribunal bases this conclusion on the rapid and significant increase in the volume and scope of goods now available from China. The Tribunal heard evidence that Chinese producers can rapidly copy any style, including those of the domestic producers. Chinese imports are moving up market, are already competing with domestic production in the low- to medium-price segments and could easily move to the higher-price segments. The Tribunal also finds persuasive the testimony of domestic producers regarding the likely negative outcomes of a rescission, which include the curtailment of production to only those products that enjoy particular market niches, the replacement of production with imports or the termination of production altogether.

More specifically, the Tribunal is persuaded that a rescission of the finding would lead to an immediate price drop of a magnitude approaching the current advance factor assessed against Chinese imports, which is 23 percent. To confer on Chinese imports such a price advantage would, in the Tribunal's view, also lead to an immediate and large increase in the level of boot imports from China. The testimony of SMAC witnesses was clear as to the implications of such a volume increase and price reduction. Domestic producers would lose sales volume and market share to China, with a proportionate reduction in employment. A rescission would also create added price competition in the highly competitive low- and medium-price segments. The Tribunal accepts the argument that Chinese imports may enjoy a cost advantage in producing boots. However, to the extent that the price gap between the domestic and the imported product is not currently bridged by anti-dumping duties, the elimination of these duties would widen the price disparity between the two products,[40] cause downward pressure on domestic prices and make the domestic product less attractive in the marketplace. The Tribunal considers that domestic producers would still benefit in the future from the protection of a finding.

The Tribunal also expects that, following a rescission, margins and profits would be seriously eroded and that future investment plans in production technologies would be put at risk. On the point of margin erosion, the Tribunal has considered the practice of many retailers that operate with fixed retail price points. As indicated by one witness, following the recession, some retailers increased retailer markups (i.e. the difference between the purchase cost and the retail price) which, in combination with fixed retail price points, has caused downward pressure on domestic manufacturing margins.[41] In this context, the Tribunal considers

40. Manufacturer's Exhibit A-2, Administrative Record, Vol. 7.
41. Manufacturer's Exhibit D-1, Administrative Record, Vol. 7.

it very likely that, if the finding against China were rescinded, there would be immediate downward pressure on price levels in the Canadian marketplace, which domestic producers would be forced to match in order to retain sales, thereby further squeezing their manufacturing margins.

The Tribunal concludes that a rescission of the finding against China would have negative effects on producer prices, production and sales volumes, profits and investment plans. For these reasons, the Tribunal is persuaded that resumed dumping of leather and non-leather boots from China is likely to cause material injury to the production in Canada of like goods.

Likelihood of Resumed Dumping and/or Subsidizing—Shoes

As there are several countries covered by the findings and given that the factors affecting exports of women's shoes and the evidence filed were country-specific, the Tribunal has examined the likelihood of resumed dumping and/or subsidizing on a country-by-country basis.

China

In its 1990 findings respecting imports of women's shoes, the Tribunal noted that imports of shoes from China had increased from 1.5 to 3.0 million pairs over the 1986-89 period. Since the findings, the import data show that imports of women's shoes from China, despite the imposition of anti-dumping advance factors ranging from 17 to 29 percent on the export price, nearly tripled in volume terms over the 1990-93 period and continued to rise in the first nine months of 1994. In terms of import share, China is currently the largest import source of women's footwear, holding one third of total imports.

The Tribunal notes that much of the evidence introduced by domestic producers and importer and retailer witnesses applied to women's boots and shoes. China has enormous production capabilities in both boots and shoes. Moreover, China has broadened the range and improved the quality of the footwear available. In addition, it has moved up market and is competing with domestic producers in a wider range of price points. As well, Chinese exports of women's boots and shoes are the subject of an anti-dumping action in Mexico, while Chinese exports of women's shoes are the subject of an anti-dumping investigation in the European Community. Further, there was evidence that, despite an apparent inflation rate of some 25 percent in China over the last year, there was no indication of any comparable rise in import prices for boots and shoes produced in China. Finally, in respect of the footwear industry, China has not, to this point, followed the normal pattern of economic evolution that causes prices to rise, which was experienced by countries such as Japan, Taiwan and the Republic of Korea.

Turning to factors that apply specifically to shoes, the Tribunal notes that, while average wholesale selling price of Chinese shoes increased by an annual average of 5.6 percent over the 1990-93 period, average wholesale selling prices of Chinese shoes were generally the lowest of any import source and were well below domestic producers' average prices over this period. As indicated earlier, however, average prices are affected by product mix and may not represent the best indicator of actual price levels or trends over the period. Rather, the evolution in the quality of shoes exported to Canada since 1990[42] suggests to the

42. *Supra,* note 28.

Tribunal that there was very little increase in the actual price of shoes of similar style and quality over this period. This view is also consistent with the testimony on the continued weakness of Chinese prices.[43]

The Tribunal is convinced that, given the significant increase in the volume and range of goods imported from China, the continued low prices at which the goods are being offered, the enormous production capabilities of the Chinese footwear industry and the indication of dumping activities by China in other foreign markets, there exists a likelihood of resumed dumping of leather and non-leather shoes from China should the finding be rescinded.

Taiwan

In its 1990 findings covering women's shoes, the Tribunal noted that Taiwanese imports had accounted for approximately half of the imports from the subject sources over the 1986-89 period.

Since the findings, imports of Taiwanese shoes have declined in terms of both volume and import share. From an import share of 24 percent in 1990, Taiwan's share fell to 4 percent of total imports in the first nine months of 1994. The enforcement data for footwear from Taiwan show that the average amount of anti-dumping duties collected over the last three years has averaged from 5 to 8 percent of the value for duty of the goods.

Similarly to Taiwanese boots, the Tribunal observes that the industry's case made little mention of import competition from Taiwanese shoes. Witnesses spoke of the dramatic changes which have taken place in Taiwan over the last few years which have affected both boots and shoes and which have already been noted.

The Tribunal concludes that, given the significant decrease in the volume of shoe imports, the evidence of rising prices[44] and the structural changes to the Taiwanese footwear industry, there is no likelihood of resumed dumping of women's leather and non-leather shoes from Taiwan in the event of a rescission and that the finding relating to women's leather and non-leather shoes from this country should be rescinded.

Brazil

- Dumping

In the 1990 findings, the Tribunal noted that Brazilian imports of leather shoes had increased from 3.8 million pairs in 1986 to 5.4 million pairs in 1989. Since the findings, imports of leather shoes increased from 3.0 to 3.2 million pairs over the 1990-93 period and increased by 2 percent in the first nine months of 1994. As noted earlier, although a general advance factor of 45 percent has been in place since 1990, Revenue Canada has also calculated and applied company-specific advance factors in the case of Brazil. There was evidence that some importers were, in fact, purchasing from companies with little or no anti-dumping advance factors.[45] This is reflected in the enforcement data, which show that the anti-dumping

43. Transcript of Public Hearing, Vol. 4, March 2, 1995, at 796-97.
44. *Supra*, note 37.
45. Transcript of Public Hearing, Vol. 5, March 3, 1995, at 895-96, 952 and 981-82.

duties collected on Brazilian footwear since the findings have averaged from 6 to 7 percent of the value for duty of the goods on an annual basis. It suggests to the Tribunal that companies with higher advance factors are not underpricing their products to access the Canadian market.

As in the case of boots, the Tribunal turned to the testimony of witnesses concerning factors likely to influence the future export potential of Brazil. There was strong evidence that Brazil is currently facing a number of internal problems, including a high inflation rate, a relatively high currency and rising production costs and selling prices. It was also mentioned that demand for footwear in Brazil has risen and that Canada is not a primary target for footwear exports from Brazil. Canadian orders are almost always linked to styles produced for the major markets, particularly the United States, because Canadian orders are too small for Brazilian factories. In fact, one retailer noted that a minimum order of 25,000 pairs is needed to have a style produced in a Brazilian factory.[46] Further, there was evidence of the closure of a number of factories and termination of production runs in Brazil and of an overall decline in production in Brazil which has taken place over the last few years.[47]

Although the average price data show that Brazilian wholesale prices for leather shoes declined in the first nine months of 1994 and were below domestic producers' prices, one major retailer indicated that prices of Brazilian shoes are expected to increase by some 12 to 17 percent for the coming fall season and added that "they are almost more expensive than some Italian shoes today.[48]" Another witness confirmed that "[t]he low price business in that country [Brazil] is gone forever.[49]"

The Tribunal was not persuaded by the industry's evidence relating to the degree of import competition from Brazilian shoes encountered since the findings. Similarly to boots, the industry's case regarding Brazil consisted of allegations of potential threat, which the Tribunal feels were not adequately substantiated.

For the foregoing reasons, the Tribunal finds that there is no likelihood of resumed dumping of leather shoes from Brazil should the finding be rescinded and that the finding relating to leather shoes from this country should be rescinded.

- Subsidizing

In its 1990 finding regarding subsidized imports of leather shoes from Brazil, the Tribunal noted that the weighted amount of subsidy, was 6.05 percent in 1988 and 3.50 percent in 1989.

As previously noted, there remain only a few footwear producers that have been grandfathered for the pre-existing plans under the BEFIEX and income tax exemption for export earnings programs. Given the elimination of the subsidy programs for new Brazilian producers, the limited scope of existing beneficiaries, the small size of the actual subsidies still in place and the lack of any evidence that new subsidy programs are likely to be created by the Brazilian government, the Tribunal is of the view that there is no likelihood of

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46. Transcript of Public Hearing, Vol. 8, March 8, 1995, at 1460.
47. Transcript of Public Hearing, Vol. 7, March 7, 1995, at 1215-17, and Vol. 8, March 8, 1995, at 1462-63.
48. Transcript of Public Hearing, Vol. 7, March 7, 1995, at 1217-19 and 1229.
49. Transcript of Public Hearing, Vol. 8, March 8, 1995, at 1465.

material injury to domestic production of like goods from this limited amount of subsidizing. Therefore, the Tribunal rescinds its finding concerning subsidized imports of leather shoes from Brazil.

Likelihood of Material Injury—Shoes

Having found that there exists a likelihood of resumed dumping of women's leather and non-leather shoes from China, the Tribunal examined whether the domestic industry is likely to be injured following a rescission of the finding respecting this country. In considering this question, the Tribunal reviewed the domestic industry's performance and market developments since the findings.

Production of women's shoes decreased by 42 percent over the 1990-93 period. During this period, the domestic producers' market share from domestic production fell from 26 points in 1990 to 13 points in 1993 and continued to fall in the first nine months of 1994, as compared to the corresponding period of 1993. The share vacated by the industry was captured by imports from both subject and non-subject countries.

The Tribunal does not share the view of certain counsel that the findings on shoes have not benefited the domestic industry. It notes that the findings have permitted the creation or re-emergence of firms such as Radius Footwear Inc., Gredico Footwear Limited and Les Chaussures Régence inc. The testimony of the witness for Radius Footwear Inc., a producer of non-leather shoes using a capital-intensive, injection-moulding process, clearly suggests that the firm would not have been acquired from its former owners without the protection of the findings. Further, the consolidated income statement shows that the existing domestic shoe producers have reported profits in each year since the findings.

However, in view of the domestic industry's continued loss of market share, the Tribunal is convinced that the domestic industry is vulnerable to resumed dumping and that, if the finding respecting China were rescinded, dumped imports from China would have a negative effect on domestic production. In reaching this conclusion, the Tribunal is cognizant of the rapid and significant increase in the volume and range of goods that have become available from China since the findings. Chinese imports are moving up market and already compete with domestic production in the low- to medium-price segments and could easily move to the higher-price segments. The Tribunal also bases its decision on the persuasive testimony of producers regarding the likely negative impact on the production of shoes in the event of a rescission, which ranges from the replacement of production with imports to the termination of production altogether.

The Tribunal is persuaded that a rescission would lead to an immediate price drop of a magnitude approaching the current advance factor of 23 percent assessed against Chinese imports. To provide Chinese imports with such a price advantage would, in the Tribunal's view, also lead to an immediate and large increase in the level of shoe imports from China.

The producer witnesses were clear as to the implications of such a volume increase and price reduction. These effects would be similar to those noted regarding boots. Domestic producers would lose sales volumes and market share to China, with a commensurate reduction in employment. A rescission would also create added price competition in low- and medium-price segments. The Tribunal accepts the argument that Chinese imports may enjoy a cost advantage in producing shoes. However, to the extent that the price gap between the domestic and the imported product is not currently bridged by anti-dumping duties, the elimination of these duties would widen the price difference between the two products, cause

downward pressure on domestic prices and make the domestic product less attractive in the marketplace. In the present review, SMAC has recognized that its members do not compete in the very low- and high-priced segments of the shoe market and has, therefore, proposed certain exclusions based on price points. The Tribunal is convinced that, for the remaining segments, domestic producers can still play an important role and would still benefit in the future from the protection of a finding.

In the event of a rescission, domestic producers also expect that profit margins would be seriously eroded, which would reduce their ability for further capital expenditures in production equipment. In a situation where there currently exists downward pressure on manufacturing margins as discussed in the section regarding boots, the Tribunal considers it very likely that, if the finding against China were rescinded, there would be immediate downward pressure on price levels in the Canadian marketplace, which domestic producers would be forced to match in order to retain sales, thereby further squeezing their manufacturing margins.

The Tribunal concludes that a rescission of the finding against China would have negative effects on producer prices, production and sales volumes, profit margins and investment plans. For these reasons, the Tribunal is persuaded that resumed dumping of leather and non-leather shoes from China is likely to cause material injury to the production in Canada of like goods.

Requests for Exclusions

Several counsel for importers requested exclusions for particular subject goods. In certain instances, counsel for SMAC consented to some of these requests. Counsel for SMAC also proposed that certain products be excluded from a continuation of the findings. The Tribunal notes that it is within its discretion to grant exclusions, and that such exclusions are only granted in exceptional circumstances.[50] Generally speaking, in determining whether to exclude a particular product from a finding of material injury or, as in the present case, from a continuation of a finding of material injury, the Tribunal will consider such factors as whether the domestic industry produces the product or any product that is directly substitutable for it.[51]

SMAC proposed that the following categories of goods be excluded from a continuation of the findings on the basis that they do not compete directly with domestic production of like goods: (1) shoes, irrespective of the material of the uppers, having a "first cost" that is above CAN$25.00 per pair; (2) shoes with leather uppers having a "first cost" that is less than CAN$5.75 per pair; and (3) shoes with non-leather uppers having a "first cost" that is less than CAN$3.50 per pair.[52] The evidence shows that shoes produced

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50. See, for example, *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (F.C.A.); *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (Federal Court of Appeal, File No. A-1806-83, June 27, 1985); and *Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America*, CDA 93-1904-07, Decision and Reasons of the Panel, May 18, 1994.
51. See, for example, *Certain Corrosion-Resistant Steel Sheet Products, Originating in or Exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America*, Inquiry No. NQ-93-007, Finding, July 29, 1994, Statement of Reasons, August 15, 1994, at 39.
52. Manufacturer's Exhibit A-2, Administrative Record, Vol. 7; and Transcript of Public Hearing, Vol. 9, March 9, 1995, at 1607-8.

in Canada do not compete with imports of such products.[53] The Tribunal, therefore, concludes that the exclusions should be granted.

A request for exclusion was received from Tai Lung (Canada) Ltd. for shoes with uncoloured, dyeable uppers of woven fabrics made wholly of natural fibres or cellulosic man-made fibres (dyeable shoes) on the basis that they are not produced in Canada and that there are no domestic substitutes for these products.[54] SMAC agreed to this request for exclusion and its counsel filed a proposed definition with the Tribunal.[55] The evidence clearly shows that dyeable shoes are not produced in Canada and that domestic producers do not manufacture any products directly substitutable for them.[56] Accordingly, the Tribunal concludes that the request for exclusion from Tai Lung (Canada) Ltd. should be granted.

Reebok requested an exclusion for branded aerobic shoes, fitness walkers and basketball shoes.[57] Similarly, Nike requested that branded aerobic, run/walk, fitness walking and basketball leather shoes be excluded from a continuation of the findings by the Tribunal.[58] These requests were made on the basis that the named products are not produced in Canada, do not compete with domestic production and, therefore, are not causing injury. SMAC agreed with these requests for exclusions and its counsel filed a proposed definition with the Tribunal, which identified Nike, Reebok and Rockport as the only branded footwear that would benefit from an exclusion.[59] Three subsequent documents were filed with the Tribunal adding several other branded footwear to the list.[60] The proposed definition provided for the exclusion of branded footwear that met the following specifications and price point:

> designed and marketed for aerobics, basketball, fitness walking or run/walk, but not designed or marketed for hiking or other walking activities; involving special technology, with a single or multi-layer moulded, not injected, sole manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as:
> (i) hermetic pads containing gas or fluid;
> (ii) mechanical components which absorb or neutralize impact; or
> (iii) materials such as low-density polymers;
> and imported into Canada at a value for duty equal to or greater than US$9.90 per pair.

The Tribunal is of the view that counsel's submissions surrounding these requests for exclusion[61] raise certain issues with respect to the Tribunal's jurisdiction on a review conducted pursuant to section 76 of SIMA which must be dealt with before considering the evidence and deciding whether or not to grant the

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53. See, for example, Transcript of Public Hearing, Vol. 1, February 27, 1995, at 170-74.
54. Importer's Exhibit S-1, Administrative Record, Vol. 9A.
55. Manufacturer's Exhibit A-7, Administrative Record, Vol. 7.
56. Transcript of Public Hearing, Vol. 5, March 3, 1995, at 933.
57. Importer's Exhibit P-1, Administrative Record, Vol. 9A; and Transcript of Public Hearing, Vol. 9, March 9, 1995, at 1752.
58. Importer's Exhibit Q-1, Administrative Record, Vol. 9A; and Transcript of Public Hearing, Vol. 9, March 9, 1995, at 1780-81.
59. Manufacturer's Exhibit A-29, Administrative Record, Vol. 7.
60. Manufacturer's Exhibits A-29A, A-29B and A-29B.1, Administrative Record, Vol. 7.
61. For purposes of clarity, the Tribunal will treat the requests of Reebok and Nike together and consider whether to grant a single exclusion for the products listed in Manufacturer's Exhibit A-29B.1.

exclusion. First, the Tribunal must determine whether it has the jurisdiction to clarify the extended definitions found in the section entitled "The Product" contained in the statement of reasons of the 1990 findings. If the Tribunal finds that it does not have this jurisdiction, then it must determine whether it has the jurisdiction to exclude the goods for which Reebok and Nike are seeking an exclusion, i.e. whether these goods are subject goods for purposes of this review.

Relying on the Federal Court of Appeal's decision in *DeVilbiss (Canada) Limited, Phelan and Smith Limited and Waffle's Electric Limited v. Anti-dumping Tribunal*,[62] counsel for CAFI argued that the Tribunal has the jurisdiction to re-interpret or clarify the class of goods as defined by the Deputy Minister in the preliminary or final determination. Counsel argued that, pursuant to subsection 76(2) of SIMA, the Tribunal, in a review, has the jurisdiction to re-hear any matter before deciding it. According to counsel, the Tribunal, in the 1990 inquiry, interpreted the Deputy Minister's definition in making its determination of like goods. As such, counsel submitted that the Tribunal should re-hear this matter and re-interpret the Deputy Minister's definition to include CAFI's suggested definitions of "sandals" and "sports footwear."

Counsel for CAFI also argued that, by granting the proposed exclusion for certain "sports footwear," the Tribunal would be excluding non-subject goods. Similarly, counsel for the RCFC argued that the Tribunal may inadvertently expand the scope of the 1990 findings by excluding goods that were never intended to be subject goods. According to counsel for the RCFC, section 76 of SIMA clearly does not give the Tribunal this jurisdiction. In the alternative, counsel for CAFI and counsel for the RCFC submitted that, if the Tribunal decides to grant the exclusion, it should be granted for non-branded products and that it should not refer to a price point.

Relying on *DeVilbiss*, counsel for Reebok and counsel for Nike argued that the Tribunal has the jurisdiction to clarify the class of goods as defined by the Deputy Minister in the event of confusion surrounding this issue in an inquiry. However, in their view, the Tribunal does not have this jurisdiction in a review. Relying on a previous decision of the Tribunal[63] and the statutory framework of SIMA, counsel argued that, once the Tribunal has made its finding, it does not have the jurisdiction to interpret that finding, except on an appeal from a decision of the Deputy Minister. However, they argued that the Tribunal has the jurisdiction to declare to what goods, if any, from among those which, rightly or wrongly, were subject to its finding, a continuation of the finding of material injury should apply.

Counsel for Reebok and counsel for Nike argued that, since the Deputy Minister determined that aerobic shoes, fitness walkers and basketball shoes were goods to which the Tribunal's findings applied, i.e. that they were not "sports footwear," these goods are subject goods for purposes of this review, and the Tribunal has the jurisdiction to exclude them from a continuation of the findings. Counsel explained that, in granting the exclusion, the Tribunal would not be, in any way, expanding the scope of the findings. Since the evidence shows that domestic producers do not manufacture, nor do they compete with, the types of shoes for which an exclusion is sought, counsel argued that there can be no possible injury to domestic production of like goods and that, therefore, the exclusion should be granted.

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62. [1983] 1 F.C. 706.

63. *Certain Carbon and Alloy Steel Plates Originating in or Exported from Belgium, Brazil, Czechoslovakia, the Federal Republic of Germany, France, the Republic of South Africa, the Republic of Korea, Romania, Spain, United Kingdom and the Netherlands*, 2 T.T.R. 49, Review No. RR-89-006, Order and Statement of Reasons, May 1, 1990.

Paragraph 42(1)(*a*) of SIMA, from which the Tribunal derives its statutory authority to conduct an injury inquiry, provides, in part, as follows:

> *42.(1) The Tribunal ... shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:*
>
> *(a) in the case of any goods to which the preliminary determination applies, as to whether the dumping ... of the goods*
>
> *(i) has caused, is causing or is likely to cause material injury.*

It is well established that the formulation or the definition of the subject goods for the purpose of the preliminary determination is the responsibility of the Deputy Minister.[64] In *DeVilbiss*, the Federal Court of Appeal held that, in an inquiry conducted under section 42 of SIMA, the Tribunal has the jurisdiction to interpret the class of goods or clarify the meaning of certain words in the Deputy Minister's definition, where the Tribunal has difficulty in ascertaining the exact scope of the goods to which the preliminary determination applies or where it finds that there is an ambiguity in the Deputy Minister's definition. The Federal Court of Appeal stated that "[t]o do so does not ... necessarily result in a redefinition of the class of goods formulated by the Deputy Minister.[65]" The Tribunal cannot conclude, however, on the basis of *DeVilbiss* alone, that it has this jurisdiction in a review.

Subsection 76(2) of SIMA provides that, in a review, the Tribunal has the jurisdiction to "re-hear any matter before deciding it." Recently, in Review No. RR-94-001,[66] the Tribunal found that it had the jurisdiction to review the issue of whether a regional industry for packaged beer continued to exist in British Columbia, as this had been a fundamental issue in the inquiry.[67] Generally speaking, "[t]o rehear, obviously implies that the tribunal has held a hearing in the first place.[68]"

In the section entitled "The Product" contained in the statement of reasons of the 1990 findings, there is a description of most of the goods which were not included in the Deputy Minister's definition of the subject goods. In the first paragraph of that section, the Tribunal stated: "[t]he product which was the subject of the inquiry was described in the preliminary determination of dumping and subsidizing as." The Tribunal then went on to reiterate how the different product categories, whether included in or excluded from the definition, were defined by the Deputy Minister. It does not appear that the Tribunal, at any time, made any

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64. See, for example, *supra*, note 62 at 712; *Dryden House Sales Limited, Carrying on Business Under the Firm Name and Style of Ambassador-Dryden House v. Anti-dumping Tribunal*, [1980] 1 F.C. 639 at 642; and *Mitsui and Co. and Mitsui and Co. (Canada) v. W.W. Buchanan, J.P.C. Gauthier, A.P. Mills, Board Members of the Anti-dumping Tribunal of Canada*, [1972] F.C. 944 at 950.

65. *Supra*, note 62 at 714.

66. *Malt Beverages, Commonly Known as Beer, of an Alcoholic Strength by Volume of not Less Than 1.0 Percent and not More Than 6.0 Percent, Packaged in Bottles or Cans not Exceeding 1,180 mL (40 oz.), Originating in or Exported from the United States of America by or on Behalf of Pabst Brewing Company, G. Heileman Brewing Company Inc. and The Stroh Brewery Company, Their Successors and Assigns, for Use or Consumption in the Province of British Columbia*, Canadian International Trade Tribunal, Order and Statement of Reasons, December 2, 1994.

67. *Ibid*. at 13.

68. R.W. Macauley, Q.C., and J.L.H. Sprague, B.A., LL.B., Practice and Procedure Before Administrative Tribunals, Vol. 2 (Scarborough: Thomson, 1994) at 27A-18.

finding with respect to the scope of these definitions. It simply adopted, for purposes of clarity, the language included in the preliminary determination in describing what goods the Deputy Minister found to be dumped and subject to the inquiry.

The Tribunal is, therefore, of the view that the Tribunal in the 1990 inquiry did not consider the issue of whether there existed an ambiguity in the extended definitions provided by the Deputy Minister in the preliminary determination. The Tribunal does not accept counsel for CAFI's argument that the Tribunal, in the 1990 inquiry, interpreted the Deputy Minister's definition when it determined what the like goods were in Canada. As such, the Tribunal is of the view that it does not have the jurisdiction, in this review, to "re-hear" a matter that was not heard in the 1990 inquiry, i.e. the Tribunal does not have the jurisdiction to clarify the extended definitions found in the section entitled "The Product" contained in the statement of reasons of the 1990 findings. The Tribunal is also of the view that clarifying the extended definitions would not have resulted in a re-definition of the class of goods formulated by the Deputy Minister or an interpretation of its 1990 findings.

In *Certain Carbon and Alloy Steel Plates,* the Tribunal stated the following:

> *If the Tribunal were to exclude goods from a finding it would be on the basis of evidence that imports of these goods would not cause material injury to Canadian production because, for example, they would be unavailable from Canadian production. This is different from saying that the goods are outside the class of goods defined by the Deputy Minister. Determinations as to whether imported goods are goods of the same description as goods to which the order or finding of the Tribunal applies are made by customs officers. A party which is not satisfied with a customs officer's determination may appeal this determination under ss. 57 to 61 [of SIMA], first to the Deputy Minister and then to the Tribunal*.[69]

On the basis of this decision and taking into account the statutory scheme of SIMA, the Tribunal is of the view that, once it has made a finding, it does not have the jurisdiction to interpret that finding, except on an appeal from a decision of the Deputy Minister. Since, in this case, the Deputy Minister determined that aerobic shoes, fitness walkers, run/walk and basketball shoes were goods to which the Tribunal's findings applied, i.e. that they were not "sports footwear," these goods must be considered subject goods for purposes of this review, and the Tribunal has the jurisdiction to exclude them from a continuation of the findings. The Tribunal is of the view that, if it excludes these goods, it will not , in any way, be expanding the scope of the 1990 findings.

The evidence shows that the types of goods for which Reebok and Nike have requested an exclusion are not produced in Canada and that domestic producers do not manufacture any products which are directly substitutable for these products or that compete with them.[70] As such, the Tribunal concludes that the request for exclusion should be granted. However, the Tribunal is of the view that it should be granted for any products that meet the specifications and the price point identified in the proposed definition and that it should not be limited to the branded footwear agreed to by the parties.

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69. *Supra,* note 63 at 71.
70. See, for example, Transcript of Public Hearing, Vol. 5, March 3, 1995, at 935-37.

In the event that the Tribunal found that it did not have the jurisdiction to clarify the extended definition of "sandals," counsel for CAFI requested an exclusion for shoes that it describes as sandals[71] and an exclusion for shoes with textile uppers. Both requests were made on the basis that the named products are not produced in Canada. The evidence shows that domestic producers make footwear that competes with shoes for which CAFI requested exclusions.[72] As such, the Tribunal concludes that the requests for exclusions made by CAFI should not be granted on the basis that there is production in Canada of goods similar to those for which exclusions are sought. The Tribunal notes that it does not need to deal with the request for exclusion from Cole•Haan, as the findings with respect to Brazil have been rescinded.

CONCLUSION

For the foregoing reasons, the Tribunal continues the findings in respect of the dumping in Canada of women's leather and non-leather boots originating in or exported from China and in respect of the dumping in Canada of women's leather and non-leather shoes originating in or exported from China, excluding:

(1) women's shoes, irrespective of the material of the uppers, having a "first cost" (F.O.B. China) above CAN$25.00 per pair;

(2) women's shoes with leather uppers having a "first cost" (F.O.B. China) less than CAN$5.75 per pair;

(3) women's shoes with non-leather uppers having a "first cost" (F.O.B. China) less than CAN$3.50 per pair;

(4) women's shoes with uncoloured, dyeable uppers of woven fabrics made wholly of natural fibres or cellulosic man-made fibres; and

(5) women's shoes designed and marketed for aerobics, basketball, fitness walking or run/walk, but not designed or marketed for hiking or other walking activities; involving special technology, with a single or multi-layer moulded, not injected, sole manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as:
(i) hermetic pads containing gas or fluid;
(ii) mechanical components which absorb or neutralize impact; or
(iii) materials such a low-density polymers;
and imported into Canada at a value for duty equal to or greater than US$9.90 per pair.

In addition, the Tribunal rescinds the findings in respect of the dumping in Canada of women's leather boots originating in or exported from Brazil, Poland, Romania and the former Yugoslavia, the dumping in Canada of women's leather and non-leather boots originating in or exported from Taiwan, and

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71. The proposed definition for the exclusion is found in Importer's Exhibit L-21, Administrative Record, Vol. 9.

72. See, for example, Transcript of Public Hearing, Vol. 3, March 1, 1995, at 575-76; and Manufacturer's Exhibit G-37, Administrative Record, Vol. 7.

the subsidizing of women's leather boots from Brazil; and in respect of the dumping in Canada of women's leather shoes originating in or exported from Brazil, the dumping in Canada of women's leather and non-leather shoes originating in or exported from Taiwan and the subsidizing of women's leather shoes from Brazil.

Lise Bergeron
Lise Bergeron
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member