



Ottawa, Monday, October 20, 1997

Review No.: RR-97-001

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82, concerning:

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

**ORDER**

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its order made on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned order in respect of the dumping in Canada of certain waterproof rubber footwear originating in or exported from the People's Republic of China, with an amendment to exclude riding boots (Presiding Member Close dissenting in part).

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned order in respect of the dumping in Canada of certain waterproof rubber footwear originating in or exported from the Czech Republic, the Slovak Republic, Poland, the Republic of Korea, Taiwan, Malaysia, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia, the Federal Republic of Yugoslavia and Hong Kong, China.

Dr. Patricia M. Close

Dr. Patricia M. Close  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Michel P. Granger

Michel P. Granger  
Secretary



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MALAYSIA, YUGOSLAVIA AND THE PEOPLE'S REPUBLIC OF CHINA**

*Special Import Measures Act* - Whether to rescind or continue, with or without amendment, the order made by the Canadian International Trade Tribunal on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: June 26 and 27, 1997  
Date of Order and Reasons: October 20, 1997

Tribunal Members: Dr. Patricia M. Close, Presiding Member  
Arthur B. Trudeau, Member  
Charles A. Gracey, Member

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Acton International Inc.  
Kaufman Footwear, Division of  
William H. Kaufman Inc.  
Genfoot Inc.

**(Domestic Manufacturers)**

Darrel H. Pearson  
Richard S. Gottlieb  
Weimo Liu  
for China Chamber of Commerce for Import & Export of  
Light Industrial Products & Arts - Crafts

**(Importer/Exporter Association)**

**Witnesses:**

George P. Hanna  
President  
The Shoe Manufacturers' Association  
of Canada

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

Lise Desjardins  
Vice-President, Shoe Division  
Acton International Inc.

Gordon Cook  
President  
Genfoot Inc.

Wang Jue  
3rd Export Division, Assistant Manager  
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Huo Xiaohong  
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Ottawa, Monday, October 20, 1997

**Review No.: RR-97-001**

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82, concerning:

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

TRIBUNAL: DR. PATRICIA M. CLOSE, Presiding Member  
ARTHUR B. TRUDEAU, Member  
CHARLES A. GRACEY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review, under subsection 76(2) of the *Special Import Measures Act*<sup>1</sup> (SIMA), of the order made by the Canadian International Trade Tribunal (the Tribunal) on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal (the CIT) on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal (the ADT) on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the ADT on April 23, 1982, in Inquiry No. ADT-2-82, concerning certain waterproof rubber footwear originating in or exported from Czechoslovakia, Poland, the Republic of Korea (Korea), Taiwan, Hong Kong,<sup>2</sup> Malaysia, Yugoslavia and the People's Republic of China (PRC).

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the order and issued a notice of review on April 11, 1997.<sup>3</sup> This notice was forwarded to all known interested parties and governments, including the successor states of two countries named in the injury findings in 1979 (Czechoslovakia) and 1982 (Yugoslavia). These successor states are: the Czech Republic and the Slovak Republic, and the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia.

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1. R.S.C. 1985, c. S-15.
  2. On July 1, 1997, the People's Republic of China resumed the exercise of sovereignty over Hong Kong. From that date, Hong Kong became a special administrative region and, as such, has retained the status of a separate customs territory. It now uses the name of "Hong Kong, China."
  3. *Canada Gazette* Part I, Vol. 131, No. 16, April 19, 1997, at 1219.

As part of this review, the Tribunal sent comprehensive questionnaires to Canadian manufacturers, importers and purchasers of the footwear under review. Questionnaires were also sent to the embassies, high commissions, consulates or trade offices of the countries involved. These questionnaires sought information on the waterproof rubber footwear industries in these countries. As part of its research activities, the Tribunal's research staff contacted domestic manufacturers, importers, purchasers, government officials and/or their counsel to answer questions pertaining to the review questionnaires. From the replies to these questionnaires and other sources, including the Department of National Revenue (Revenue Canada) and Statistics Canada, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all Tribunal exhibits, including the order in Review No. RR-92-001 and the findings in Review No. R-7-87, Inquiry No. ADT-2-82 and Inquiry No. ADT-4-79. Also included in the record are the notice of review, the public and confidential replies to the questionnaires for the 1997 review and the public and protected pre-hearing staff reports for the 1992 review and the present review. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on June 26 and 27, 1997.

The Shoe Manufacturers' Association of Canada (SMAC) and three of the four domestic manufacturers of waterproof rubber footwear, i.e. Acton International Inc. (Acton), Kaufman Footwear, Division of William H. Kaufman Inc. (Kaufman) and Genfoot Inc. (Genfoot), were represented by counsel at the hearing. SMAC, Acton, Kaufman and Genfoot submitted evidence and their counsel made arguments in support of continuing the order, with amendment.

An importer/exporter association, China Chamber of Commerce for Import & Export of Light Industrial Products & Arts - Crafts (China Chamber of Commerce), was also represented by counsel at the hearing. The China Chamber of Commerce submitted evidence and its counsel made arguments in support of rescinding the order.

## **PRODUCTS UNDER REVIEW**

The waterproof rubber footwear under review includes a broad range of footwear as described in the findings and statements of reasons from Inquiry Nos. ADT-4-79 and ADT-2-82, which were subsequently reviewed in Review Nos. R-7-87 and RR-92-001 and continued, without amendment. The footwear described as waterproof rubber footwear is constructed wholly or in part of rubber, including thermoplastic rubber, worn over the foot or shoe, with or without liners, linings, fasteners or safety features. The range of rubber footwear under review may be categorized into the following groups: (1) low rubbers of light or heavy construction which may have such features as nylon vamp, net lining and stretchable rubber; (2) overshoes 6 to 10 in. in height, which may include such design features as zippered fronts, straps, buckles, nylon tops, fleece or net lining, etc.; and (3) all-rubber boots worn over the foot and constructed to various heights, with 12-in. and 15-in. heights being the most popular. Included in this latter group are red sole rubber boots, city boots, rainboots, riding boots, hunting and fishing boots and hip and chest waders.

Excluded from the waterproof footwear under review are snowmobile boots, rubber-bottom/leather-top boots and "safety footwear." The latter is defined as footwear which meets safety standards established by the

Canadian Standards Association. Waterproof footwear made of polyvinyl chloride (PVC) is not under review.<sup>4</sup>

### **DOMESTIC PRODUCERS**

The Canadian industry for the waterproof rubber footwear under review consists of four producers: Acton, Genfoot, Kaufman and Baffin Inc. (formerly Vimod Rubber Co.). These companies account for all known Canadian production of the waterproof rubber footwear covered by this review. Kaufman and Acton produce rubber footwear primarily using the lay-up method of production. Baffin Inc. and Genfoot produce rubber footwear using the injection moulding process. All four companies also produce product lines not covered by this review.

### **SUMMARY OF PAST FINDINGS AND ORDER**

On May 25, 1979, in Inquiry No. ADT-4-79, the ADT found that the dumping of certain waterproof rubber footwear from Czechoslovakia, Poland, Korea and Taiwan had caused, was causing and was likely to cause material injury to production in Canada of like goods. The ADT observed that the imports of the subject goods into Canada were almost entirely from the four subject countries. Largely as a result of their inability to compete with these dumped imports, Canadian producers had not been able to serve the discount and mass merchandiser markets which continued to be mainly the preserve of imports. The ADT did not foresee any significant change in this situation as long as the dumping continued. According to the ADT, the imposition of anti-dumping duties would significantly reduce the differential between the domestic and imported product and, as a result, would permit the industry to enlarge its market share and thus benefit from greater utilization of capacity and economies of scale. The ADT also expected the industry to increase prices and hence profits on the product lines where competition from dumped imports had caused the most severe price depression.

On April 23, 1982, in Inquiry No. ADT-2-82, the ADT found that the dumping of certain waterproof rubber footwear from Hong Kong, Malaysia, Yugoslavia and the PRC was likely to cause material injury to the production in Canada of like goods. In its decision, the ADT noted that, although the industry had regained some market share following the 1979 finding, this was mostly achieved by recapturing small chains and independent retailers. Many large importers, such as mass merchandisers, had not returned to domestic sourcing. Instead, they had simply switched sources to Hong Kong, Malaysia, Yugoslavia and the PRC from the countries subject to the 1979 finding.

On October 22, 1987, the CIT, following a review of the findings in Inquiry Nos. ADT-4-79 and ADT-2-82, decided to continue those findings, without amendment. In its review, the CIT noted that the industry's market performance was stronger than in the years preceding the findings and that the industry was in the midst of a transition to more competitive production methods and technology, especially the injection moulding process. The CIT also noted that Czechoslovakia, Korea and Taiwan had maintained a strong presence in the domestic market and that dumping from these three countries had continued unabated since the 1979 finding. Moreover, although a number of the named countries in the 1982 finding had not shipped to Canada in recent years, the CIT remained concerned about the ease and rapidity with which

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4. See *Certain Waterproof Footwear Originating in or Exported from the Czech and Slovak Federal Republic, the People's Republic of China, the Republic of Korea and Taiwan*, Canadian International Trade Tribunal, Inquiry No. NQ-92-005, *Finding*, February 4, 1993, *Statement of Reasons*, February 19, 1993.

import sourcing was switched from countries subject to anti-dumping measures to other countries subsequent to the 1979 injury finding.

On October 21, 1992, after reviewing the finding in Review No. R-7-87, the Tribunal decided to continue the finding, without amendment. The Tribunal noted that, although many of the aggregate industry indicators were positive, the market had declined and domestic sales were not robust in the face of weak market conditions, caused not only by the recession but also by the effects of the Goods and Services Tax and the application of the Quebec provincial sales tax on footwear. The interaction of the various elements created an economic environment in which prices were generally under downward pressure.

The Tribunal observed that a significant portion of the market for the largest volume rubber footwear item, the “city” boot, was concentrated in the hands of relatively few large retail chains and mass merchandisers. Competitive pressures forced them to seek low-priced goods from domestic and foreign sources. In the Tribunal’s view, in circumstances of weak market conditions such as those that existed at the time, the risk of dumping was especially high. The concentration at the retail level made the loss of a few accounts potentially critical to the industry.

The Tribunal noted the large export capacity of Korea, the PRC, Malaysia and Poland relative to the size of the Canadian market. Furthermore, enforcement data showed that, although the total volume of imports was small, a high proportion of the subject goods imported in the previous five years had been dumped. The Tribunal accepted the evidence that the industry’s outlook could change from positive to negative in a matter of months if the finding were rescinded. If one major merchandiser were to import dumped goods, the others would quickly follow suit in a chain reaction which would result in lower prices, increased unit costs of production and squeezed margins that would threaten the viability of the industry.

In a dissenting opinion, one Tribunal member concluded that, despite changing market conditions, the Canadian industry had demonstrated that it could adapt and compete with fair import competition over the normal protective tariff that had been extended with the withdrawal of the General Preferential Tariff (GPT) on rubber footwear. In his view, the finding of material injury should have been rescinded.

## **OTHER PROCEEDINGS**

In 1991, the Tribunal conducted a review pursuant to section 19 of the *Canadian International Trade Tribunal Act*<sup>5</sup> of the order withdrawing the GPT on rubber footwear. The GPT is a temporary system of tariff preferences introduced by Canada in 1974. It is part of an international system to assist developing countries expand their exports to developed country markets. Under this system, industrial goods originating in developing countries can enter Canada at a lower tariff rate.

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

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5. R.S.C. 1985, c. 47 (4th Supp.).

the removal of rubber footwear from the list of goods qualifying for GPT rates. The Tribunal concluded that Canadian production of rubber footwear faced a threat of injury from the reinstatement of the GPT rate of duty with respect to imports of various rubber footwear.

In June 1994, Order in Council P.C. 1994-1078 was issued withdrawing the benefit of the GPT provided pursuant to section 35 of the *Customs Tariff*<sup>6</sup> beginning on July 1, 1994, with respect to rubber footwear, other than sandals and riding boots solely of rubber, of heading No. 64.01 or subheading No. 6402.20 of Schedule I to the *Customs Tariff*.<sup>7</sup>

## **POSITION OF PARTIES**

### **Domestic Industry**

Counsel for the domestic manufacturers noted that the domestic market for the footwear under review declined in the period under review, continuing a trend observed in earlier inquiries. Urbanization and the use of PVC as a substitute for rubber in certain waterproof footwear were cited as factors contributing to this decline.

Counsel for the domestic manufacturers also noted that the Canadian industry, with its domestic base stabilized by anti-dumping measures, had performed reasonably well in the changing environment resulting from the implementation of the *Canada-United States Free Trade Agreement*<sup>8</sup> (FTA) and the *North American Free Trade Agreement*<sup>9</sup> (NAFTA). Furthermore, the industry had coped well with competition from offshore producers located in countries not subject to anti-dumping measures. However, counsel observed that the concentration of the retail sector continued during the period under review. For producers of waterproof rubber footwear, the trend had been towards an increasing dependence on a relatively small number of powerful retail customers better equipped than ever before to source merchandise from any producing country in the world.

While doing reasonably well in terms of sales, production, market share and employment, producers nevertheless reported that prices and margins were under pressure from retailers and that profitability was trending down. Counsel for the domestic manufacturers expressed concern that further price pressures, which would be caused by a resumption of dumping, could swiftly injure the profitability, reinvestment and ultimately the viability of the industry.

At the same time, the industry did not perceive a threat of injury from countries which had not exported to Canada in the period under review or whose exports had been insignificant in recent years. Accordingly, counsel for the domestic manufacturers did not bring forward evidence or argument concerning a continuation of the order in respect of Poland, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia, the Federal Republic of Yugoslavia, Korea and Taiwan.

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6. R.S.C. 1985, c. 41 (3rd Supp.).

7. *General Preferential Tariff Withdrawal Order, amendment*, SOR/94-475, June 23, 1994, *Canada Gazette* Part II, Vol. 128, No. 14 at 2716.

8. *Canada Treaty Series*, 1989, No. 3 (C.T.S.).

9. 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).



SMAC considered the PRC to represent the single greatest threat to the Canadian waterproof footwear industry. In support of its position, counsel for the domestic manufacturers noted the recent imposition by the European Union of anti-dumping duties on certain footwear originating in the PRC. Counsel also pointed out that Revenue Canada had recently re-investigated the normal values and export prices of the subject goods from the PRC and that a general advance of 74 percent on the FOB selling price had been determined for exporters not having normal values. This new advance is considerably higher than the 19 percent advance previously applicable to Chinese exports of the subject goods to Canada.

These two events, in the view of counsel for the domestic manufacturers, reconfirmed the propensity of the PRC to dump and indicated that the margins by which Chinese exporters were prepared to dump were substantially greater than found in previous determinations by Revenue Canada. Further, counsel considered that Chinese footwear exports damaged the production of footwear of various kinds in major markets where special import measures have not been in place. Counsel pointed out that the PRC continues to be the largest supplier of imports into the US market under heading No. 64.01 and other "protective footwear" categories where the customs tariff rate has been maintained at 37.5 percent.

In terms of likely volumes of imports from the PRC in the absence of an order, counsel for the domestic manufacturers suggested that Canada could expect the same proportional penetration by Chinese exports as in the US market. In terms of likely prices, counsel referred to the prices of red sole boots available to a large retailer in the United States that would be equally available to retailers in Canada if the order were rescinded.

Counsel for the domestic manufacturers also asked the Tribunal to consider the growth in the volume of pairs of waterproof footwear from the PRC, Malaysia and Czechoslovakia imported into the European Union between 1992 and 1995.

Counsel for the domestic manufacturers viewed Hong Kong as a special case because of its recent takeover by the PRC. For that reason, counsel proposed the continuation of the order in respect of Hong Kong.

As for Malaysia, counsel for the domestic manufacturers asked the Tribunal to consider the value and volume of sales to Canada and the fact that the Malaysian product is a more expensive, higher-quality, more highly designed product which is important to several Canadian producers.

With regard to the Czech Republic and the Slovak Republic, counsel for the domestic manufacturers asked the Tribunal to consider the high reputation for quality and service that had been held by Czechoslovakian rubber footwear in the Canadian market and the evidence on the boot targeted for the Canadian market by the Czech Republic. Counsel suggested that the Tribunal consider the re-determinations of normal values and advances by Revenue Canada for Malaysia and for the Czech Republic and the Slovak Republic, as well as the world capacity information for these countries.

In the event that the order is allowed to expire, counsel for the domestic manufacturers argued, domestic producers are certain that large orders for commodity-type products now made in Canada would be ordered at dumped prices from the PRC, Malaysia and other subject countries. Only the sacrifice of margins by domestic producers would slow that surge in imports and, as margins are already thin, the potential for injury to the industry is, therefore, acute.

In addition, counsel for the domestic manufacturers argued that independent importers would find opportunities to source lower volume specialty items at exceptionally low dumped prices. The sale and

production of such goods are important to all domestic producers, but especially to producers of footwear formed by the lay-up process. Thus, counsel argued, the injury threatened by a resumption of dumping would fall on footwear produced by both the high-volume capital-intensive injection-moulding production process and the more labour-intensive lay-up production process. Counsel asked the Tribunal to continue the order in respect of the PRC, Malaysia, the Czech Republic, the Slovak Republic and Hong Kong.

### **Importer/Exporter Association**

Counsel for the China Chamber of Commerce observed that the findings on waterproof rubber footwear have given the Canadian industry the longest period of protection in the history of Canada's anti-dumping legislation, that is, 18 years. While the duration of a finding is not itself a cause for discontinuance, counsel noted that industries were to be protected from materially injurious dumping only as long as necessary. As well, counsel asked that the Tribunal take into account the permanent withdrawal of the GPT applicable to the subject footwear and the protection thereby afforded to domestic producers.

Counsel for the China Chamber of Commerce acknowledged that clear evidence of dumping could be seen in the enforcement data provided in the Tribunal's pre-hearing staff report. With the exception of Poland and Yugoslavia, this dumping continued unabated throughout the period of review. In the case of the PRC, counsel pointed out that only very few exporters had obtained normal values. For factories or products without normal values, the margin of dumping was established to be a 19 percent advance on export price in 1993 and 74 percent in 1997. Counsel argued that the margins of dumping based on surrogate values should be given limited weight by the Tribunal. The use of these surrogate values will continue to result in dumping margins being found in the future, but, they argued, it would be "technical" dumping. Notwithstanding the use of these surrogate values, counsel noted that the amount of anti-dumping duties collected was a relatively small percentage of import values out of the PRC.

With regard to the domestic industry's position that a propensity to dump on the part of Chinese exporters could be established on the basis of the EU determination, counsel for the China Chamber of Commerce referred to the evidence that the footwear under review in Canada and the footwear in the inquiry in the European Union are made in different Chinese factories by different producers using different machinery. As to the industry's contention that there was an overlap in the case of certain snowmobile boots and/or other boots of similar construction, they argued that there was no exclusion of snowmobile boots in the EU finding, while there was such an exclusion in the Canadian findings, so that there was no overlap in respect of products bearing fabric uppers.

Counsel for the China Chamber of Commerce noted that the dumping could not be viewed in isolation, but had to be examined in conjunction with the issue of vulnerability. More particularly, the Tribunal must consider whether or not the "technical" dumping from the PRC, which is likely to continue, will translate into price levels and volumes which will be materially injurious. Counsel referred to the evidence of the China Chamber of Commerce and the two exporters from the PRC, as well as to the evidence in the Tribunal's pre-hearing staff report. The evidence shows declining sales of the subject goods from the PRC into Canada. At the same time, there was no evidence in the record of price declines from the PRC during the period of review. In counsel's view, had Chinese exporters wanted, they could have lowered their prices to Canada, paid the 19 percent advance on the lower amounts and accessed the Canadian market. In fact, counsel contended, the evidence shows that prices have been steady and/or increasing by product.

Counsel for the China Chamber of Commerce referred to the apparent market sales volume statistics for the PRC and their corresponding unit values in the Tribunal's pre-hearing staff report. They argued that those tables showed no relationship between pricing and volume that would suggest improper conduct on the part of Chinese exporters. Counsel argued that unit value prices from the PRC were consistently higher than those for undumped goods from the United States. Similarly, there was no evidence to indicate that sales from the PRC were depressing the prices of Canadian suppliers during this period.

Counsel for the China Chamber of Commerce submitted that no probative evidence had been received that the Chinese have been disturbing the Canadian market or have had any impact on Canadian producers during the course of the last five years. Counsel referred to their interrogatory regarding the main sources of competition experienced by each producer in respect of the subject footwear, with references to and examples of lost sales, price suppression and price erosion, and to the limited value of the responses received to that question. They qualified the pricing information tendered as being hearsay. They referred to their cross-examination of each of the three witnesses for the domestic industry who were asked to account for the changes in each company's profitability and pricing over the review period. The witnesses attributed those changes to a variety of different factors, including a decline in the market, a transition to PVC, accounting methods, changes in corporate structure and marketing approach. Counsel noted that not one of the witnesses had attributed those changes to dumping on the part of the PRC.

Counsel for the China Chamber of Commerce submitted that, for the most part, the domestic industry has been healthy in the last five years and rejected the industry's argument that this was due to the fact that there was an order in place. The new margin of dumping for the PRC, established at 74 percent, is almost four times that established in the previous investigation by Revenue Canada. The new margin of dumping was found in 1996, but dumping to that degree, counsel argued, may have been taking place for a longer time. Canadian producers were unable to translate that margin of dumping into any level of price erosion, suppression or lost sales, even though imports from the PRC were subjected to only a 19 percent advance on the export selling price in 1996.

Regarding the future, counsel for the China Chamber of Commerce pointed to the evidence which shows that the PRC has declining capacity in respect of waterproof rubber footwear, declining production, a high utilization rate, a reduced number of producers and reduced exports to Canada and certain other countries and that the Canadian market is not attractive on a price basis. In discussing reduced production, counsel referred to the reduced volume of rubber available during the period up to 1996 and to the Chinese environmental regulations that will result in the closure of six factories. In addition, the evidence regarding Chinese legislation in the area of international trade, fair trade and competition were cited as indications of the changes in the PRC relative to competition. The regulation to punish exporters for dumping was indicative, in counsel's view, that the PRC was starting to take more care in its international trading.

In conclusion, counsel for the China Chamber of Commerce submitted that the challenges ahead were not from price- or volume-erosive effects of technical dumping, but from labour costs, material costs, productivity and the price competition among Canadian producers which has kept prices low. They noted that the domestic firms are resilient, that they have met many other challenges and that they have begun to meet these challenges. They will benefit from new product developments, export opportunities to the United States and elsewhere and diversification within their specialties. In counsel's submission, the order under review should be rescinded.

## ANALYSIS

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue, with or without amendment, the order or finding. In making its decision in this matter, the Tribunal must deal with two fundamental questions. It must first determine whether there is a likelihood of resumed dumping, if the order is rescinded. If the Tribunal finds that there is a likelihood of resumed dumping, it must then determine whether such dumping is likely to cause material injury to the domestic industry.

### **Likelihood of Resumed Dumping**

The Tribunal notes that SMAC did not seek a blanket continuation of the order. Instead, SMAC decided not to propose actively the continuation of the order in respect of Poland, Korea, Taiwan and the successor states of Yugoslavia.

The domestic rubber footwear industry did not perceive a threat of injury from Poland and the successor states of Yugoslavia because none of these countries exported the subject goods to Canada during the period under review.<sup>10</sup> The industry did not perceive a threat of injury from Korea and Taiwan because both countries have exported insignificant volumes of the subject goods to Canada in recent years. Moreover, these countries were not exporting the subject goods aggressively to other developed countries, their real wages were increasing, and their footwear industries are market driven.<sup>11</sup>

The Tribunal agrees with SMAC that there is no evidence to support a likelihood of resumed dumping on the part of these countries. Accordingly, the Tribunal sees no reason to continue the order in respect of Poland, Korea, Taiwan, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia.

For the PRC, Malaysia, the Czech Republic, the Slovak Republic and Hong Kong, SMAC argued that the order should be continued to prevent injury to the domestic industry. Imports from the PRC were seen as the greatest threat to the domestic industry.

With regard to Hong Kong, the Tribunal first examined the enforcement information from Revenue Canada.<sup>12</sup> The evidence shows that, during the entire review period, anti-dumping duties were assessed against imports from Hong Kong in only one of the five years, and those duties were of a nominal amount.

Nevertheless, SMAC contended that the order should be continued in respect of Hong Kong, given the resumption of Chinese sovereignty over the former British colony on July 1, 1997. However, it is the Tribunal's understanding that Hong Kong is a separate customs territory and that it has retained its membership as such in international organizations, such as the World Trade Organization. A witness for SMAC testified that, "[t]o our knowledge, there are no rubber footwear factories in Hong Kong. Therefore, the threat would be from goods that would be produced in China and shipped through Hong Kong."<sup>13</sup> If, as the domestic industry fears, the subject goods produced in the PRC are shipped through Hong Kong, the dumping would clearly originate in the PRC, not in Hong Kong. In the circumstances, the Tribunal does not find a likelihood of resumed dumping by Hong Kong.

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

11. Manufacturer's Exhibit A-1 at 4, Administrative Record, Vol. 11.

12. Tribunal Exhibit RR-97-001-4 (protected), Administrative Record, Vol. 2 at 2.

13. *Transcript of Public Hearing*, Vol. 1, June 26, 1997, at 40.

With regard to Malaysia, the Tribunal again looked first to the enforcement information from Revenue Canada<sup>14</sup> for evidence on the likelihood of resumed dumping.

The Tribunal notes that, in 1993, one exporter in Malaysia obtained specific normal values for exports of the subject goods to Canada. For other exporters in Malaysia, Revenue Canada determined normal values by ministerial specification. Specifically, the FOB selling price to the importer in Canada was advanced by 19 percent. Malaysia exported the subject goods to Canada throughout the period from 1992 to 1996. Anti-dumping duties were collected on imports of waterproof rubber footwear from Malaysia in each of those years.

The anti-dumping duties collected on imports from Malaysia over the period under review amounted to very small percentages of their total import values reported by Revenue Canada for the tariff items covering the subject goods.<sup>15</sup> This suggests to the Tribunal an effort on the part of Malaysian exporters to price the subject goods in accordance with the normal values prescribed by Revenue Canada. No evidence was adduced relating to the export capacity or export orientation in Malaysia for the subject goods, nor was any information presented to suggest the existence of anti-dumping actions against Malaysia in other jurisdictions. Accordingly, the Tribunal does not find a likelihood of resumed dumping of the subject goods from Malaysia.

With respect to the Czech Republic and the Slovak Republic, the Tribunal also reviewed the Revenue Canada enforcement information.<sup>16</sup> In 1993, Revenue Canada determined normal values by ministerial specification for all exporters in the former Czechoslovakia (now the Czech Republic and the Slovak Republic). Specifically, the FOB selling price to the importer in Canada was advanced by 70 percent for the Czech Republic and the Slovak Republic. The Slovak Republic exported the subject footwear to Canada in 1996 only, while the Czech Republic exported the subject footwear to Canada throughout the period from 1993 to 1996. Anti-dumping duties were collected on imports of waterproof rubber footwear in each year that exports were made from the individual countries.

The anti-dumping duties collected on imports from the Czech Republic and the Slovak Republic amounted to considerably higher percentages of the total import values reported by Revenue Canada for the tariff items covering the subject goods than was the case with Malaysia. At the same time, however, import volumes reported by Revenue Canada for the Czech Republic fell steeply in 1996 from their level in 1995 and fell at an even steeper rate in the first four months of 1997. Import volumes reported by Revenue Canada for the Slovak Republic, which only began exporting to Canada in 1996, were lower than import volumes from the Czech Republic in 1996 and were non-existent in the first four months of 1997.

One of the domestic producers testified during the hearing that “Czechoslovakia” is less of a problem “now that they are more free enterprise.”<sup>17</sup> Furthermore, the Tribunal noted the apparent shift in focus by the Czech Republic and the Slovak Republic to European markets. The information provided by

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14. Tribunal Exhibits RR-97-001-3A and RR-97-001-3B, Administrative Record, Vol. 1 at 153-60 and 160.1-60.6 respectively; and Tribunal Exhibit RR-97-001-4 (protected), Administrative Record, Vol. 2 at 2. The information on anti-dumping duties is for the subject goods only.

15. Tribunal Exhibit RR-97-001-4 (protected), Administrative Record, Vol. 2 at 2. Those tariff items also include non-subject goods which could not be easily identified and removed from the statistics. Tribunal Exhibit RR-97-001-3A, Administrative Record, Vol. 1 at 154.

16. Tribunal Exhibit RR-97-001-4A (protected), Administrative Record, Vol. 2 at 13.

17. *Transcript of Public Hearing*, Vol. 1, June 26, 1997, at 177.

SMAC indicates that imports of waterproof footwear (including non-subject footwear) into the European Union from the Czech Republic and the Slovak Republic in 1995 have increased considerably over the level of imports of waterproof footwear (including non-subject footwear) into the European Union from the former Czechoslovakia in 1992.<sup>18</sup> At the same time, imports of the subject footwear into Canada have decreased considerably in the past several years. Moreover, the Tribunal notes that both the Czech Republic and the Slovak Republic have applied for membership in the European Union and that the European Commission has recommended that the Czech Republic join the next wave of countries negotiating entry into the European Union.<sup>19</sup> There is no information on the record relating to the export capacity in the Czech Republic and the Slovak Republic for the subject goods.

The fact that anti-dumping duties have been collected while an anti-dumping action is in force is an indicator of a likelihood of resumed dumping. However, in the absence of supporting collateral evidence on a likelihood of resumed dumping, such as export capacity information and anti-dumping actions in other jurisdictions, and in view of the increased orientation of the Czech Republic and the Slovak Republic towards European markets, the Tribunal does not find a likelihood of resumed dumping from the Czech Republic and the Slovak Republic.

The Tribunal next considered whether or not there is a likelihood that the PRC will resume the dumping of waterproof rubber footwear if the order is rescinded.

Once again, the Tribunal looked first to the enforcement data, which show that anti-dumping duties were assessed by Revenue Canada in each of the years under review. These duties amounted to a notable percentage of the import values reported by Revenue Canada for the relevant tariff items pertaining to the subject goods. As indicated previously, the fact that anti-dumping duties have been collected while an order is in place is an indicator of a likelihood of resumed dumping.

The June 1997 re-investigation of normal values on waterproof rubber footwear by Revenue Canada produced a ministerial advance on export selling prices almost quadruple its previous level, from 19 to 74 percent, for those Chinese exporters that did not have specific normal values. Only four exporters obtained specific normal values following that re-investigation, although a considerably greater number of exporters of the subject goods from the PRC have been identified.<sup>20</sup>

The Chinese witnesses provided evidence to demonstrate that the PRC was determined to conduct its foreign trade in accordance with international rules and to instil a code of conduct in its exporters that would ensure compliance with the rules. The Tribunal notes these efforts as a positive development, given the fact that the waterproof rubber footwear industry in the PRC is export oriented.

In 1997, the PRC expects to export 42 percent of its production. From 1998 to 2000, the PRC expects to reduce exports, but exports will still account for 36 percent of output.<sup>21</sup> Important export markets for the PRC include the United States and the European Union.<sup>22</sup> Although counsel for the China Chamber of Commerce argued that Canada was not as attractive a market as the United States and the European

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18. Manufacturer's Exhibit A-1 at 6-7, Appendix D, Administrative Record, Vol. 11.

19. *World Trade Report*, The Economist Intelligence Unit, 3rd Quarter, 1997.

20. Tribunal Exhibit RR-97-001-4 (protected), Administrative Record Vol. 2 at 4-5; and *Transcript of In Camera Hearing*, Vol. 2, June 27, 1997, at 100.

21. Exporter's Exhibit B-4 at 1, Administrative Record, Vol. 13.

22. *Transcript of Public Hearing*, Vol. 2, June 27, 1997, at 239.

Union on a price basis, the Tribunal observes that the prices achieved in Canada are frequently as good as, or better than, the prices for specific footwear in the United States.<sup>23</sup> It also observes that these returns were calculated at a time when Canada had anti-dumping duties in place. In the Tribunal's view, Canada will continue to be an attractive, albeit small, market for the PRC.

The Tribunal also considered the question of capacity and capacity utilization. It notes that both capacity and output in the Chinese waterproof rubber footwear industry are expected to decline starting in 1998.<sup>24</sup> Testimony by the Chinese witnesses attributed these declines to the movement of rubber footwear production to other Southeast Asian countries and to the shutdown of factories that did not meet environmental standards.<sup>25</sup> The evidence shows that, for the industry as a whole, the capacity utilization rate is expected to be maintained at about 83 percent.<sup>26</sup> The evidence also shows much higher capacity utilization rates in 1997 for Hangzhou Huasui Rubber Products Co. Ltd. and Beijing Chemical Industry Group Imp. & Exp. Co. than for the industry as a whole.<sup>27</sup> This suggests that there are firms with capacity utilization rates much lower than the industry average.

In summary, the Tribunal notes the collection of anti-dumping duties while the order was in place, the export orientation of the Chinese waterproof rubber footwear industry, the price attractiveness of the Canadian market and the capacity available in the PRC to increase sales to Canada. In light of the foregoing, and despite the changes initiated by the Chinese to curb dumping, the Tribunal is of the opinion that the dumping in Canada of waterproof rubber footwear from the PRC is likely to resume if the order is rescinded.

Based on the foregoing, the Tribunal is of the opinion that there is no likelihood of resumed dumping of waterproof rubber footwear from the Czech Republic, the Slovak Republic, Poland, Korea, Taiwan, Malaysia, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia, the Federal Republic of Yugoslavia and Hong Kong. The Tribunal rescinds the order in respect of these countries.

On the other hand, the Tribunal is of the opinion that there is a likelihood that dumping of waterproof rubber footwear from the PRC will resume if the order is rescinded. In the next section, the Tribunal considers whether, in the absence of an order, the resumption of dumping in Canada of waterproof rubber footwear from the PRC is likely to cause material injury to the domestic industry.

### **Likelihood of Material Injury (Majority Opinion)**

The domestic industry produces rubber footwear using two distinct processes: injection moulding and lay-up. The sector which uses injection moulding is highly capital intensive, which requires that producers confine their output to more or less basic types of footwear that are suited to long-run, high-volume production. This sector uses primarily thermoplastic rubber as its raw material input. The sector which uses the lay-up process, while highly labour intensive, also produces basic types of footwear. Additionally, this sector has the flexibility to produce a considerably broader range of footwear, and in considerably lower volumes, than is practicable with injection moulding. Because of the labour intensity and because the sector which uses the lay-up process uses primarily natural rubber as a raw material, its output in

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23. Exporter's Exhibits B-6 (protected) at 1 and B-10 (protected) at 1, Administrative Record, Vol. 14.

24. Exporter's Exhibit B-4 at 1, Administrative Record, Vol. 13.

25. Exporter's Exhibit B-2 at 5-6, Administrative Record, Vol. 13.

26. Exporter's Exhibit B-4 at 1, Administrative Record, Vol. 13.

27. Exporter's Exhibits B-5 (protected) at 1 and B-9 (protected) at 1, Administrative Record, Vol. 14.

both basic and more specialized types of footwear tends to be more upscale and to sell at higher price points in comparison to the injection moulded product.

The economic indicators show that the situation currently facing domestic producers of waterproof rubber footwear is not particularly robust. Both domestic production<sup>28</sup> and domestic sales<sup>29</sup> decreased substantially over the review period, as the market for waterproof rubber footwear continued to trend downward.<sup>30</sup>

<b>SELECTED ECONOMIC INDICATORS</b>			
<b><u>Domestic Industry</u></b>	<b><u>1994</u></b>	<b><u>1995</u></b>	<b><u>1996</u></b>
Production (pairs)	1,368	1,082	841
Sales (pairs)	1,238	1,048	866

The shift from rubber to PVC as the raw material used in the production of particular items of footwear has been cited as the reason for that decline.<sup>31</sup> However, there is no doubt in the Tribunal's mind that a rescission of the order in respect of the PRC and a resumption of dumping of the subject goods would materially injure this already weakened industry. In particular, material injury would be sustained by the two manufacturers, Genfoot and Acton, that collectively accounted for more than three quarters of total domestic production of the footwear under review in 1996 and for more than three quarters of total domestic employment engaged in the production of this footwear. The combined production of the footwear by these two firms declined over the period under review. As a consequence, production of waterproof rubber footwear by the industry as a whole has declined.

Furthermore, the financial performance of the two major producers has been uneven. From a reasonably healthy profit picture in 1994, the net income before taxes reported for these two producers has declined substantially.<sup>32</sup> As a consequence, although overall returns to the domestic industry are low, the numbers conceal the even less satisfactory results reported by the two major players. In the circumstances, a worsening of the financial results posted by the two largest producers would threaten the viability of one, if not both, of those firms. Therefore, in the Tribunal's opinion, there is no doubt that a rescission of the order in respect of the PRC would be materially injurious to the industry as a whole.

Moreover, the industry faces considerable price sensitivity in its sales to the retail sector. The evidence presented at the hearing confirms that domestic producers continue to count the large retail chains among their major accounts.<sup>33</sup> As noted in previous reviews, these mass merchandisers compete

28. *Public Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-5, Administrative Record, Vol. 1 at 180.

29. *Public Pre-Hearing Staff Report*, revised June 23, 1997, Tribunal Exhibit RR-97-001-5C, Administrative Record, Vol. 1 at 288.16.

30. *Ibid.*

31. Manufacturer's Exhibit A-1 at 1, Administrative Record, Vol. 11.

32. *Protected Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-6 (protected), Administrative Record, Vol. 2 at 47 and 50.

33. Manufacturer's Exhibit A-1 at 2, Administrative Record, Vol. 11.



aggressively for market share on commodity items, primarily on the basis of price.<sup>34</sup> The domestic industry also expressed concern about losing sales of lower volume specialty items produced using the lay-up process to dumped goods imported at exceptionally low prices by independent importers.<sup>35</sup>

In such circumstances of weak market conditions, slim profit margins and aggressive price competition, the risk of material injury from dumping is high.

The Tribunal believes that domestic retailers would not be able to resist for very long the pull exerted by the reduction in prices from the PRC that would follow a rescission of the order. The evidence before the Tribunal indicates that, from 1992 to 1996, the landed duty-paid cost for red sole rubber boots from the PRC was less than the net delivered value for red sole rubber boots manufactured in Canada.<sup>36</sup> If the anti-dumping duties were removed, imports of red sole rubber boots from the PRC would become even more price competitive with domestic production. Moreover, the uncertainty involved in importing would be removed, as there would no longer be periodic reviews of normal values and export prices by Revenue Canada. The evidence in this case demonstrates that these reviews can result in large increases in the ministerial advances applied to those products not having normal values.<sup>37</sup>

One domestic producer stated that a large mass merchandiser buys its red sole rubber boots for sale in Canada from the Canadian industry and its red sole rubber boots for sale in the United States from the PRC.<sup>38</sup> The Tribunal has no doubt that, absent the order, and given the expected prices and the less uncertain conditions of importing, that mass merchandiser will buy its boots for both the Canadian and the US markets from the PRC.

If even one major retailer embraced the reduced prices at which the subject footwear would be available from Chinese exporters, the rest would be bound to follow in order to remain competitive in the mass market for commodity types of footwear. The Tribunal is convinced that the resultant price pressures would be sufficiently intense that their impact would also be felt by producers in the higher-priced sector which uses the lay-up process. As the price differential widened between imported footwear produced by the lay-up process and domestic footwear produced in the same manner, it would become increasingly difficult for retail buyers to justify the premium involved in purchasing Canadian footwear. The penetration of the dumped imports into the smaller retail stores might be slower than into the mass merchandising market, but it would be just as inevitable, or the smaller retail stores would simply lose market share.

The Tribunal is persuaded that the potential volume of those dumped imports would be significant. Evidence produced by the Chinese witnesses showed that the PRC has an enormous capacity to produce waterproof rubber footwear and that much of the capacity is export oriented, with significant volumes being exported to the United States and other countries.<sup>39</sup> The divergence of even a small percentage of the PRC's exports to other foreign markets to Canada could take a large share of the Canadian market. Excess capacity

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34. Tribunal Exhibit RR-97-001-1, Administrative Record, Vol. 1 at 99.

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

36. *Protected Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-6 (protected), Administrative Record, Vol. 2 at 64.

37. In the case of China, the Revenue Canada advance on selling prices for exporters not having normal values, or not having normal values for particular products, was increased from 19 percent in the 1993 review to 74 percent in the 1997 review.

38. Manufacturer's Exhibit AC-1 at 3, Administrative Record, Vol. 11.

39. Exporter's Exhibit B-3 at 1, Administrative Record, Vol. 13.

alone in the PRC is sufficient to serve the entire Canadian market for waterproof rubber footwear several times over.<sup>40</sup>

As previously stated, the Tribunal believes that, if the order were rescinded, the dumping of waterproof rubber footwear from the PRC would likely resume. The dumping would, in the Tribunal's opinion, lead to lower prices in the Canadian market. Domestic producers would be forced to meet these lower prices or face the prospect of losing production volume and market share. Either alternative would lead to a lower level of margins for Canadian producers. The lower margins would have a materially detrimental effect on the financial performance of the domestic industry and the ability of some of the domestic producers to survive.

For the above reasons, the Tribunal concludes that there is a likelihood of injury to domestic production of like goods if the order in respect of the PRC is rescinded.

### **EXCLUSION**

During the hearing, it became apparent that none of the domestic producers that appeared at the hearing produced riding boots for equestrian purposes or that none of their products were competing with imported riding boots. The Tribunal has, thus, decided to exclude all-rubber riding boots for equestrian purposes from the order.

### **CONCLUSION**

The Tribunal concludes that the order in respect of the Czech Republic, the Slovak Republic, Poland, Korea, Taiwan, Malaysia, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia, the Federal Republic of Yugoslavia and Hong Kong, China, should be rescinded.

However, the Tribunal concludes that there is a likelihood of dumping of waterproof rubber footwear from the PRC and that such dumping is likely to cause material injury to the Canadian industry. Consequently, the Tribunal continues the order in respect of the PRC, with an amendment to exclude all-rubber riding boots for equestrian purposes.

Arthur B. Trudeau

Arthur B. Trudeau

Member

Charles A. Gracey

Charles A. Gracey

Member

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40. *Ibid.*

## **PARTIAL DISSENT OF PRESIDING MEMBER CLOSE**

While agreeing with my colleagues on a number of the issues found relevant by them in reaching their decision, I am unable to share their conviction that a resumption of dumping in Canada of waterproof rubber footwear from the PRC is likely to cause material injury to the domestic industry. The Canadian rubber footwear industry has made dramatic adjustments over the last 20 years, as markets have declined worldwide and competition from developing countries has increased. For 18 of those years, it has been protected by anti-dumping duties. In my opinion, the domestic industry has taken appropriate advantage of this long period of protection and has made the necessary adjustments to enable it to compete successfully, over normal protective tariff rates, in today's highly competitive domestic and international markets.

The industry has positioned itself well for the day when the anti-dumping protection could end, with each of the firms investing in new equipment<sup>41</sup> and product development.<sup>42</sup> The industry has met the challenges of competing with its counterparts south of the border under the increasingly tariff-free environment of the FTA and NAFTA.<sup>43</sup> It has competed successfully with imports of waterproof rubber footwear from the United States,<sup>44</sup> which has 17 percent of the domestic market (a percentage much higher than the 2 percent held by the PRC). The industry has also made inroads in the United States despite a significant presence of Chinese rubber footwear in that market.<sup>45</sup> It has doubled its exports as a percentage of production<sup>46</sup> in a declining world market, with export destinations to Germany, the Middle East and Scandinavia, as well as to the United States.<sup>47</sup> In the domestic market, which is also declining, the Canadian footwear industry increased its market share of waterproof rubber footwear sales from 69 percent in 1991<sup>48</sup> to 78 percent in 1996.<sup>49</sup> Over the same period, the subject goods (including imports from the PRC) saw their overall share in the Canadian market decrease from 16 to 4 percent. While increasing their share of the domestic market, the Canadian producers have also reduced their reliance on waterproof rubber footwear. Such footwear now comprises only 9 percent of total industry sales, compared to 19 percent in 1991,<sup>50</sup> as the industry has found other market niches, such as specialty safety footwear,<sup>51</sup> or has switched to more

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41. *Protected Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-6 (protected), Administrative Record, Vol. 2 at 60.

42. *Transcript of In Camera Hearing*, Vol. 1, June 26, 1997, at 44.

43. Manufacturer's Exhibit A-1 at 2, Administrative Record, Vol. 11.

44. *Ibid.*

45. *Transcript of Public Hearing*, Vol. 1, June 26, 1997, at 176: "In the United States over 50 per cent of subject goods are imported from China."

46. *Protected Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-6 (protected), Administrative Record, Vol. 2 at 89. Exports as a percentage of production in 1996 were more than double their level in 1994 and 1995 and, with the exception of 1991, were higher in 1996 than in any year since 1988.

47. *Transcript of Public Hearing*, Vol. 1, June 26, 1997, at 126-27; and *Transcript of In Camera Hearing*, Vol. 1, June 26, 1997, at 50.

48. *Public Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-5, Administrative Record, Vol. 1 at 236.

49. *Public Pre-Hearing Staff Report*, revised June 23, 1997, Tribunal Exhibit RR-97-001-5C, Administrative Record, Vol. 1 at 288.16. The Chinese share of the Canadian market fell from 3 percent in 1994 and 1995 to 2 percent in 1996.

50. *Protected Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-6 (protected), Administrative Record, Vol. 2 at 49, 51, 53 and 55; and *Protected Pre-Hearing Staff Report*, July 31, 1992, Tribunal Exhibit RR-97-001-9 (protected), Administrative Record, Vol. 2.1 at 39, 41, 43 and 45.

51. *Transcript of In Camera Hearing*, Vol. 1, June 26, 1997, at 45-47.

competitive materials, such as plastic.<sup>52</sup> In other words, after 18 years of protection, the rubber footwear industry in Canada can be described as resilient and competitive.

Furthermore, in recent years, the industry has, as a whole, been profitable on its manufacture of waterproof rubber footwear.<sup>53</sup> Notwithstanding the diminishing role played by sales of waterproof rubber footwear, the evidence shows that the industry's net income before taxes on sales of waterproof rubber footwear made a disproportionate contribution to the industry's overall bottom line in both 1995 and 1996.<sup>54</sup> In my view, this suggests that the rubber footwear component of the industry is not as vulnerable as my colleagues have concluded.

I further disagree with my colleagues that the resultant price pressures of rescinding the order would be sufficient to cause retailers to switch from domestic to Chinese sources. The evidence that the Tribunal received was that the mass retailers, whose market has been captured by the Canadian companies, would not switch from domestic to imported product unless the price of imported footwear was as much as 30 percent lower than the price of domestic footwear. However, some products, such as red sole rubber boots from the PRC, are landed in Canada, duty-paid, at values as much as 75 percent lower than the 1996 wholesale prices of domestically produced red sole rubber boots.<sup>55</sup> Despite this price differential, the retail industry has not made, nor does it appear to be ready to make, that switch.<sup>56</sup>

In my opinion, if the considerably lower price of some Chinese waterproof rubber footwear has not already convinced retailers to switch, then neither will a slightly larger price differential.<sup>57</sup> In fact, the reverse appears to be happening. Despite the price advantage of Chinese imports, the volume of imports from the PRC fell by 42 percent between 1992 and 1996.<sup>58</sup>

Indeed, the evidence presented to the Tribunal suggests that Chinese imports do not generally compete head-to-head with Canadian rubber footwear. In the case of mass-produced waterproof rubber footwear using the injection moulding process and destined for the mass merchandisers, some Canadian retailers appear to be prepared to pay a considerable premium for domestic rubber products.<sup>59</sup> Higher-priced and more custom-designed products using the lay-up method target a different market segment than that of

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52. *Transcript of Public Hearing*, Vol. 1, June 26, 1997, at 168.

53. *Protected Pre-Hearing Staff Report*, June 2, 1997, Tribunal Exhibit RR-97-001-6 (protected), Administrative Record, Vol. 2 at 56.

54. *Ibid.* at 57.

55. *Ibid.* at 64.

56. Manufacturer's Exhibit AC-1 at 3, Administrative Record, Vol. 11: "It is significant that while Wal-Mart is retailing these [made in China] basic items south of the border, its stores in Canada appear to be supplied entirely with Canadian waterproof rubber footwear"; and Tribunal Exhibit RR-97-001-23, Administrative Record, Vol. 5.2 at 54, 64, 74, 84, 118, 128, 138 and 147. The questionnaire responses by retailers indicated a high level of satisfaction with the quality of the waterproof rubber footwear and the service that they were receiving from Canadian manufacturers.

57. It was only in June 1997 that Revenue Canada increased the advance on the selling price of the subject goods imported from China to 74 percent. The advance had previously been set at 19 percent.

58. *Public Pre-Hearing Staff Report*, revised June 23, 1997, Tribunal Exhibit RR-97-001-5C, Administrative Record, Vol. 1 at 288.12.

59. Tribunal Exhibit RR-97-001-23, Administrative Record, Vol. 5.2 at 46, 60, 76 and 85.

the Chinese product and are mainly sold in small specialty stores,<sup>60</sup> which would be a difficult market for the Chinese to capture.

In addition, the decline in the Canadian rubber footwear market cannot be blamed on Chinese imports. In fact, there does not even seem to be a correlation between the two. While sales of domestically produced waterproof rubber footwear have been declining, so have sales of Chinese imports, in both absolute and percentage terms, despite their lower prices.

Evidence presented to the Tribunal indicates that market forces unrelated to dumping from the PRC or elsewhere have had, and will continue to have, the most significant effect on the future of the Canadian industry. One witness stated that as much as 99.9 percent of the reason<sup>61</sup> for the decline in the domestic market for waterproof rubber footwear is competition from the lower-priced PVC footwear. This competition from PVC footwear is not just from offshore. Canadian producers themselves are switching from rubber to plastic in order to offer cheaper, more competitive, commodity products to their domestic accounts.<sup>62</sup>

For the foregoing reasons, I am not persuaded that there is a sufficient causal relationship between the prices of Chinese waterproof rubber footwear and the performance of the domestic industry to be able to conclude that resumed dumping is likely to cause material injury. Therefore, the order should be rescinded in respect of the PRC.

Dr. Patricia M. Close  
Dr. Patricia M. Close  
Presiding Member

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60. *Transcript of In Camera Hearing*, Vol. 1, June 26, 1997, at 34.

61. *Transcript of Public Hearing*, Vol. 1, June 26, 1997 at 43.

62. The largest Canadian injection moulding manufacturer no longer makes the basic red sole boot out of rubber, but has switched to plastic. The largest producer of lay-up rubber footwear has also begun to produce a line of red sole boots made from PVC.