



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2008-003

Waterproof Footwear

*Determination issued
Tuesday, April 28, 2009*

*Reasons issued
Wednesday, May 13, 2009*

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IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) of the *Special Import Measures Act*, respecting:

THE DUMPING OF WATERPROOF FOOTWEAR ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND VIETNAM

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged injurious dumping of waterproof footwear and waterproof footwear in nearly finished form, constructed wholly or in part of rubber and/or thermoplastic rubber (TPR), originating in or exported from the People's Republic of China and waterproof footwear and waterproof footwear in nearly finished form, constructed wholly or in part of rubber, TPR and/or plastic, originating in or exported from Vietnam, has caused injury or retardation or is threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on February 27, 2009, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the above-mentioned goods has caused injury.

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Presiding Member

Serge Fréchette

Serge Fréchette
Member

André F. Scott

André F. Scott
Member

Hélène Nadeau

Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

Tribunal Members:	Pasquale Michael Saroli, Presiding Member Serge Fréchette, Member André F. Scott, Member
Research Director:	Randolph W. Heggart
Senior Research Officers:	Mark Howell Josée St-Amand
Senior Statistical Research Officer:	Julie Charlebois
Statistical Research Officer:	Stéphane Racette
Counsel for the Tribunal:	Eric Wildhaber
Manager, Registrar Office:	Michel Parent
Registrar Officers:	Cheryl Unitt Sarah MacMillan

PARTICIPANTS:

	Counsel/Representatives
The Shoe Manufacturers' Association of Canada	Michael Kaylor
Columbia Sportswear Canada LP	Richard G. Dearden Wendy J. Wagner Andrew A. Bradley
Regence Footwear Inc.	Richard S. Gottlieb Vincent Routhier
Canadian Association of Importers and Exporters Inc.	Greg Kanargelidis Elysia Van Zeyl
Canadian Tire Corporation Limited	Riyaz Dattu
Loblaw Companies Limited	Gerry H. Stobo Jack Hughes
Embassy of the Socialist Republic of Vietnam	Ha Ke Tuan

Sears Canada Inc.

Leigh A. Lampert

Vietnam Leather and Footwear Association

Nguyen Thi Tong

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. On February 27, 2009, following a complaint filed on January 8, 2009, by The Shoe Manufacturers' Association of Canada (SMAC),¹ the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping of waterproof footwear and waterproof footwear in nearly finished form,² constructed wholly or in part of rubber and/or thermoplastic rubber (TPR), originating in or exported from the People's Republic of China (China) and waterproof footwear and waterproof footwear in nearly finished form, constructed wholly or in part of rubber, TPR and/or plastic, originating in or exported from the Socialist Republic of Vietnam (Vietnam) (the subject goods). The CBSA defined the subject goods as follows:³

Waterproof footwear and waterproof footwear in nearly finished form, constructed wholly or in part of rubber and/or thermoplastic rubber (TPR), originating in or exported from the People's Republic of China. The distinctive feature of waterproof footwear is that both the sole portion and a portion of the upper, sufficient to give waterproof protection to the foot, are incorporated in a waterproof component which may be made of rubber or TPR. The goods subject to this investigation include waterproof footwear worn over the foot constructed to various heights, and waterproof footwear made of waterproof footwear bottoms combined with tops made of textiles or other materials. They may be constructed with or without liners, linings, fasteners or safety features.

Excluded from the definition of subject goods are ski boots; skating boots; and goods covered in the current CITT order number RR-2004-008, namely, snowmobile boots; rubber-bottom leather-top boots; all-rubber riding boots for equestrian purposes; and rubber "safety footwear" defined as footwear that meets safety standards established by the Canadian Standards Association.

...

Waterproof footwear and waterproof footwear in nearly finished form, constructed wholly or in part of rubber, thermoplastic rubber (TPR) and/or plastic, originating in or exported from Vietnam. The distinctive feature of waterproof footwear is that both the sole portion and a portion of the upper, sufficient to give waterproof protection to the foot, are incorporated in a waterproof component which may be made of rubber, TPR and/or plastic. The goods subject to this investigation include waterproof footwear worn over the foot constructed to various heights, and waterproof footwear made of waterproof footwear bottoms combined with tops made of leather, textiles or other materials. They may be constructed with or without liners, linings, fasteners or safety features.

Excluded from the definition of subject goods are ski boots and skating boots.

2. On March 2, 2009, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.

3. On April 28, 2009, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,⁴ the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury.

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1. According to the complaint, SMAC is an association consisting of, among others, six known producers of waterproof footwear in Canada: Genfoot Inc. (Genfoot), Rallye Footwear Inc. (Rallye), Chaussures Yeti Inc. (Yeti), Hichaud Inc. (Hichaud), AirBoss-Defense and Baffin Inc. (Baffin).
 2. Waterproof footwear in nearly finished form includes footwear that can be rendered waterproof by the insertion of a plug, flap, etc., in or near the sole. Administrative Record, Vol. 1A at 314.
 3. Administrative Record, Vol. 1A at 313.
 4. R.S.C. 1985, c. S-15 [*SIMA*].

CBSA'S DECISION TO INITIATE AN INVESTIGATION

4. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping had caused injury or was threatening to cause injury. Accordingly, the CBSA initiated an investigation on February 27, 2009.

5. The CBSA collected information with respect to the volume of dumped goods for the period from January 1 to June 30, 2008. The CBSA was of the view that 100.0 percent of the subject goods had been dumped. For China, the estimated margins of dumping ranged from 1.5 percent to 123.4 percent of the export price, with an estimated weighted average margin of dumping of 45.0 percent. For Vietnam, the estimated margins of dumping ranged from 11.1 percent to 54.5 percent of the export price, with an estimated weighted average margin of dumping of 31.2 percent. Further, the CBSA was of the opinion that the estimated volume of dumped goods was not negligible and that the estimated weighted average margins of dumping were not insignificant.⁵

ANALYSIS

Legislative Framework

6. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.⁶

7. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "retardation" as "material retardation of the establishment of a domestic industry". It also defines "domestic industry" as "... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, 'domestic industry' may be interpreted as meaning the rest of those domestic producers". Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before addressing the issues of injury, retardation or threat of injury.

Like Goods and Classes of Goods

8. The Tribunal notes that, in initiating its investigation, the CBSA defined the subject goods as waterproof footwear and waterproof footwear in nearly finished form, constructed wholly or in part of rubber and/or TPR, originating in or exported from China, and waterproof footwear and waterproof footwear in nearly finished form, constructed wholly or in part of rubber, TPR and/or plastic, originating in or exported from Vietnam.

9. The Tribunal is bound by *SIMA* to conduct its preliminary injury inquiry based on the description of the subject goods established by the CBSA at initiation.⁷ However, that does not prevent the Tribunal from considering whether the subject goods comprise more than one class of goods.

5. Administrative Record, Vol. 1A at 321.

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

7. *Copper Pipe Fittings* (8 August 2006), PI-2006-001 (CITT) at para. 15.

10. SMAC did not raise the issue of classes of goods or like goods in its initial complaint. However, Regence Footwear Inc. (Regence), a party opposed to the complaint, submitted that the goods should be divided into vulcanized natural rubber footwear and injection-moulded thermoplastic footwear.⁸ Although the CBSA has defined TPR as a synthetic rubber product, Regence submitted that it is a plastic product designed to have the physical appearance of rubber.

11. Regence stated that the major difference between the two categories is that vulcanized natural rubber footwear is cooked, which allows it to be more resistant to cold, heat and chemicals. It added that, with vulcanized natural rubber, the footwear can be laminated in fabric, allowing a perfect integration. According to Regence, this cannot be accomplished with plastics. Regence also submitted that natural rubber footwear has excellent non-slippage qualities and permits the encapsulation of insulation.

12. In Regence's view, vulcanized natural rubber footwear is a different class of goods from thermoplastic waterproof footwear. Regence stated that thermoplastic waterproof footwear is lighter, requires less labour to produce, and allows more refined and defined shapes and original designs than vulcanized rubber footwear. It also submitted that consumers prefer the lower price of thermoplastic footwear. According to Regence, thermoplastic footwear has the following disadvantages: it will melt when exposed to high temperatures, it has little chemical resistance, and it deteriorates faster than vulcanized natural rubber footwear.

13. Regence submitted that vulcanized natural rubber footwear of the same description as the subject goods is not produced in Canada and, therefore, requested that natural rubber footwear be excluded from the preliminary injury inquiry.⁹ Regence also submitted that Genfoot is an importer of vulcanized rubber footwear.

14. SMAC replied that Regence's request for a separate class of goods for natural rubber footwear is without merit.

15. SMAC submitted that both the domestically produced like goods and the subject goods closely resemble each other except for material composition, method of production and pricing. SMAC also submitted that, although the domestically produced like goods and the vulcanized natural rubber footwear differ in material composition, they closely resemble each other in terms of appearance, market characteristics and end uses. SMAC noted that pricing is examined during an inquiry and is not a reason to create a separate class of goods.

16. In deciding the issue of like goods and classes of goods, the Tribunal considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the domestic goods fulfill the same customer needs.¹⁰

17. In addressing whether there is more than one class of goods, the Tribunal must determine whether the alleged separate classes of goods constitute like goods to each other. If they do, they will be regarded as comprising one class of goods.¹¹

8. According to Regence, thermoplastics include TPR, polyvinyl chloride (PVC), thermoplastic olefin (TPO), thermoplastic polyurethane (TPU) and thermoplastic elastomer (TPE). Administrative Record, Vol. 3 at 6-8.

9. Administrative Record, Vol. 3 at 11.

10. *Grain Corn* (15 November 2005), PI-2005-001 (CITT) at para. 36.

11. *Leather Footwear* (27 December 2001), NQ-2001-003 at 9.

18. For the purposes of determining whether there is evidence of a reasonable indication of injury in the context of this preliminary injury inquiry, the Tribunal will treat the subject goods as “like goods” in relation to one another and, therefore, as comprising only one class of goods. The Tribunal finds, in the context of this preliminary injury inquiry, that the waterproof footwear manufactured in Canada are like goods to the subject goods.

19. As stated in the notice of commencement of preliminary injury inquiry, the Tribunal will not consider exclusion requests at this stage of the proceedings and, indeed, has no submissions before it to suggest that it should.

20. However, the Tribunal is of the view that there is evidence on the record which indicates that there may be more than one class of goods, namely, waterproof footwear in finished form and waterproof footwear in nearly finished form. The question of whether these constitute two distinct classes of goods is an issue that will need to be fully addressed during an inquiry under section 42 of *SIMA*, should the CBSA conclude, in its preliminary determination, that the subject goods have been dumped. Accordingly, the Tribunal will collect data on those two potential classes of goods and will invite submissions from parties on this question.

21. The Tribunal has also requested the CBSA to collect separate information on the dumping of (1) waterproof footwear in finished form and (2) waterproof footwear in nearly finished form.

Domestic Industry

22. On the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that Genfoot, Rallye, Yeti, Hichaud, AirBoss-Defense and Baffin constitute the domestic industry. According to the complaint, Genfoot and Rallye together account for an estimated 90 percent of the production of waterproof footwear in Canada.¹² Letters of support for the complaint were received from Genfoot, Rallye, Yeti and Hichaud, while two other producers, AirBoss-Defense and Baffin, submitted letters stating that they neither supported nor opposed the complaint.

Volume of Dumped Goods

23. SMAC used data from Statistics Canada to estimate the volume of imports of the subject goods for the years 2006 and 2007, and for the first six months of 2008. The CBSA was satisfied with SMAC’s estimated volumes of imports from China and Vietnam.

24. These estimated volumes of imports showed a continuously increasing trend for both countries between January 2006 and June 30, 2008. Imports from China increased by 55 percent in 2007 over 2006, from 493,000 pairs to 765,000 pairs. They increased by a further 117 percent in the first half of 2008 compared to the first half of 2007, reaching 430,000 pairs for the period from January to June 2008. With regard to imports from Vietnam, they more than quadrupled in 2007, from 11,700 pairs in 2006 to 54,000 pairs in 2007, and almost doubled during the first six months of 2008 compared to the same period of 2007, to 33,300 pairs for the first six months of 2008.¹³ According to SMAC, Genfoot is the only Canadian producer that imported the subject goods. Its imports occurred in 2007 and were from Vietnam. SMAC also submitted that Mark’s Work Wearhouse, Columbia Sportswear Canada LP and Regence are the major importers of the subject footwear from Vietnam.¹⁴

12. Administrative Record, Vol. 1 at 19.

13. Administrative Record, Vol. 1A at 318.

14. Administrative Record, Vol. 1 at 30-31, 37.

25. SMAC submitted that imports from countries other than China and Vietnam were insignificant. The CBSA, however, determined that imports from other countries were significant.¹⁵ Nevertheless, the Tribunal notes that import volumes from other countries were lower than those from China, except in 2006 when they reached 657,000 pairs or 57 percent of total imports for that year.

26. The total volume of imports declined by 7 percent between 2006 and 2007, but increased by 107 percent for the period from January to June 2008 compared to the same period in 2007. China's share of the total volume of imports steadily increased between 2006 and the first six months of 2008, from 42 percent to 65 percent, and became the biggest source of imports in 2007, reaching 71 percent. As for Vietnam, its share of the volume of imports increased from 1 percent to 5 percent between 2006 and the first six months of 2008. Finally, imports from other countries as a percentage of total import volumes declined from 57 percent in 2006 to 30 percent in the first half of 2008. The Tribunal is of the view that this decline was mainly due to increased imports from China.

27. The Tribunal notes that, while imports from both China and Vietnam were increasing, the production volume of domestic producers was decreasing, and is of the view that the opposing nature of these trends is, at this stage, reasonably indicative of a causal relationship between the two.

28. Based on the above, the Tribunal is of the view that, from 2006 to the first half of 2008, the volume of imports from China and Vietnam increased significantly.

Effect on the Price of Like Goods

29. In its complaint, SMAC stated that the production of waterproof footwear in Canada is split between the winter and the spring selling seasons. The spring selling season extends from May to July and accounts for 25 percent of the production, while the winter selling season extends from December to March and accounts for 75 percent of the production.¹⁶

30. SMAC stated that imports of the subject goods have caused material injury in the form of price depression and price suppression.

31. SMAC submitted that the average unit selling values for the domestic production decreased between 2006 and the period from January to June 2008. SMAC also provided average unit selling values for China and Vietnam. The evidence on the record indicates that the Chinese average unit selling values declined in 2007 before increasing in the first half of 2008 as compared to the same period in 2007. However, Chinese average unit selling values consistently remained significantly lower than those of the Canadian production. For the average unit selling values of the subject footwear from Vietnam, the evidence on the record shows that they were significantly higher than those of the Canadian production in 2006 and in 2007, but that they have since declined significantly, such that, during the first half of 2008, they were lower than the Canadian average unit selling values, but higher than the Chinese average unit selling values.

32. The Tribunal is of the view that the comparison of average unit selling prices, at this stage, provides a reasonable indication of injury to the domestic industry caused by the dumped subject goods.

33. SMAC provided evidence of increases in the major material costs for the Canadian producers of waterproof footwear. It submitted that the price of TPR, a main material for footwear manufactured by the Canadian producers, increased between 2006 and 2008, while the selling price of those domestically

15. Administrative Record, Vol. 1 at 37, Vol. 1A at 318.

16. Administrative Record, Vol. 1 at 39.

produced goods remained unchanged between 2006 and 2008.¹⁷ The Tribunal is of the view that this evidence suggests price suppression caused by the dumped imports.

34. SMAC alleged price erosion in the form of a decline in the average unit selling value of the domestically produced goods being attributable to imports of the subject goods. In support of this claim, SMAC referred to an instance when one of its members, Genfoot, had to lower its selling price for certain products to a Canadian retailer in order to avoid losing business to imports from China.

35. Based on the foregoing, the Tribunal is of the view that the evidence discloses a reasonable indication that the dumping of the subject goods has caused price depression and price suppression.

Impact on the Domestic Industry

36. SMAC stated that imports of the subject goods have caused material injury in the form of lost sales, reduced employment and reduced profitability.

37. SMAC submitted many examples of lost sales that occurred for one of its members, Genfoot. Those lost sales were replaced by imports of the subject goods.¹⁸ SMAC alleged that these lost sales were caused by the dumped subject goods.

38. SMAC submitted that there was a decrease in employment between 2005 and June 2008 caused by imports of the subject goods.

39. The evidence on the record indicates reduced profits for Genfoot and Rallye over the past two fiscal years, and SMAC alleged that this was directly caused by the dumped goods.

40. The Tribunal also looked at the impact on the domestic industry in terms of market share. As mentioned previously, imports of the subject goods increased between 2006 and the period from January to June 2008, while sales from domestic production declined. Consequently, imports from China and Vietnam increased their market share between 2006 and the period from January to June 2008, while the percent share of the domestic production declined during that same period. The correlation between the increase in the presence of the subject goods in the Canadian market and the deterioration in the domestic industry's performance indicators, as discussed above, gives rise to a reasonable indication of a causal link between the dumping of the subject goods and injury to the domestic industry.

41. Based on the foregoing, the Tribunal is satisfied that the evidence on the record provides a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Other Factors

42. Regence alleged that the injury to the domestic industry was due to other factors and is not attributable to the effects of dumping. These other factors included the appreciation of the Canadian dollar relative to the U.S. dollar, the failure of the domestic industry to adapt to changing consumer demands and the failure of the domestic industry to invest in new technologies.

43. Regence submitted that the domestic industry's alleged injury is attributable to exchange rate fluctuations between the Canadian dollar and the U.S. dollar between 2006 and 2008 rather than to dumping. It submitted that imports are purchased in U.S. funds and that, because they are ordered several months in advance of their delivery in Canada, the value of the Canadian dollar may differ greatly from the

17. Administrative Record, Vol. 2 at 62-73, 316-34, Vol. 2A at 2-48.

18. Administrative Record, Vol. 1 at 43, Vol. 2 at 36, 135-91, 316-49.

time of order to the time of payment. The Tribunal examined exchange rate fluctuations between 2006 and 2008, on a yearly basis, and noted that the strengthening of the Canadian dollar relative to the U.S. dollar correlates with an increase in the market share of imports from China and Vietnam and a decline in market share of sales from domestic production.

44. SMAC did not address the exchange rate issue in its reply submission.

45. Regence also alleged that the domestic industry failed to adapt to the changing consumer demand for products such as boots made of ethylene-vinyl acetate (EVA), polyurethane or vulcanized natural rubber, which resulted in the segmentation of the market into different product types according to specific consumer needs. Regence also submitted that this is due to the failure of the domestic industry to invest in new technologies. Regence submitted that, instead of producing a competing brand in Canada, Genfoot decided to import EVA boots and vulcanized natural rubber footwear, while Rallye allegedly chose not to react to this situation. Regence submitted that this resulted in the contraction of the demand for goods manufactured in Canada.

46. SMAC replied that Genfoot has been an innovator and pioneer company in injection-moulded waterproof footwear and that the decline in the production of vulcanized natural rubber footwear is a result of it being too labour intensive and environmentally unfriendly.

47. The Tribunal is of the view that the strengthening of the Canadian dollar may have had an impact on the domestic industry. However, the Tribunal is of the opinion, in this preliminary injury inquiry, that the evidence on the record regarding the impact of these other factors does not negate its conclusion that there is a reasonable indication of injury caused by the dumping of the subject goods. It is only in the context of an inquiry under section 42 of *SIMA* that the Tribunal will be in a position to fully assess the magnitude of these other factors and their relative importance.

CONCLUSION

48. Based on the foregoing analysis, the Tribunal is of the view that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Presiding Member

Serge Fréchette

Serge Fréchette
Member

André F. Scott

André F. Scott
Member