



OTTAWA, September 10, 2009

4214-23

STATEMENT OF REASONS

**concerning a final determination with
respect to the dumping of**

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

DECISION

On August 26, 2009, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made a final determination of dumping respecting 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, thermoplastic rubber (TPR) and/or plastic, originating in or exported from the Socialist Republic of Vietnam.

Cet Énoncé des motifs est également disponible en français. Veuillez vous reporter à la section « Renseignements ». This *Statement of Reasons* is also available in French. Please refer to the “Information” section.

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SUMMARY OF EVENTS

[1] On January 8, 2009, the Canada Border Services Agency (CBSA) received a complaint from the Shoe Manufacturers' Association of Canada (SMAC) of Baie d'Urfé, Quebec. The complaint alleged that imports into Canada of certain waterproof footwear were being dumped and were causing injury to the Canadian industry. The subject goods include certain waterproof rubber footwear originating in or exported from the People's Republic of China (China) and certain waterproof rubber and/or plastic footwear originating in or exported from the Socialist Republic of Vietnam (Vietnam).

[2] On January 29, 2009, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act*¹ (SIMA), the CBSA informed SMAC that the complaint was properly documented. The CBSA also notified the governments of China and Vietnam that it had received a properly documented complaint.

[3] On February 27, 2009, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated an investigation respecting the dumping of the subject goods.

[4] On March 2, 2009, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary inquiry into whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury.

[5] On April 28, 2009, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury.

[6] On May 28, 2009, pursuant to subsection 38(1) of SIMA, the President made a preliminary determination of dumping with respect to the subject goods after estimating the margins of dumping and specifying the goods to which the preliminary determination applies using the information available at the time. Provisional duty was imposed, pursuant to subsection 8(1) of SIMA, on imports of dumped goods that are of the same description as any goods to which the preliminary determination applies, and that are released during the period commencing on the day the preliminary determination is made and ending on the earlier of the day on which the President terminates the investigation and the day the Tribunal makes an order or finding.

[7] The CBSA continued its investigation and, on the basis of the results, the President is satisfied that the subject goods have been dumped and that the margins of dumping of the goods of those countries are not insignificant. Consequently, on August 26, 2009, pursuant to paragraph 41(1)(a) of SIMA, the President made a final determination of dumping with respect to the subject goods.

[8] Provisional duty will continue to be imposed on the dumped goods until the Tribunal makes a finding with respect to the goods to which the final determination applies. The Tribunal shall make its finding no later than September 25, 2009.

¹ R.S.C. 1985, c. S-15 [SIMA]

PERIOD OF INVESTIGATION

[9] The investigation covered all subject goods imported into Canada from October 1, 2007, to September 30, 2008, the period of investigation (POI).

INTERESTED PARTIES

Complainant

[10] SMAC submitted the complaint on behalf of its members who produce waterproof footwear made of plastic and/or rubber. The name and the address of the complainant is:

The Shoe Manufacturers' Association of Canada
90 Morgan Road, Suite 203
Baie d'Urfé, QC H9X 3A8

Exporters

[11] At the initiation of the investigation, the CBSA identified 2,340 exporters² potentially shipping subject goods from customs accounting documents and from the complaint. Given the large number of exporters, the CBSA relied upon paragraph 30.3(1)(a) of SIMA, which provides that margins of dumping may be determined in relation to the largest percentage of goods of each country that can reasonably be investigated if it is determined that it would be impracticable to determine a margin of dumping in relation to all goods because of the number of exporters, producers or importers.

[12] Of the 2,340 exporters identified at initiation, the CBSA identified 297 that shipped in quantities valued at \$200,000³ or more during the POI. Of these, 263 shipped goods originating in China, 22 shipped goods originating in Vietnam, and 12 shipped goods originating in both China and Vietnam. These exporters account for 75% of the quantity from China and 84% of the quantity from Vietnam of all waterproof footwear imported into Canada during the POI.

[13] The CBSA sent a Request for Information (RFI) to each of the 297 exporters that shipped in quantities valued at \$200,000 or more during the POI (sampled exporters). Other exporters were not provided with an RFI and were not requested to provide information (non-sampled exporters). However, the RFI was available to non-sampled exporters upon request and voluntary responses could be considered where practicable pursuant to subsection 30.3(2) of SIMA.

[14] An RFI was sent to the sampled exporters in China (including Hong Kong and Macao), Vietnam, and 14 other countries that may have shipped subject goods. The RFI included instructions requesting any exporter that was not the producer of the subject goods to forward a copy of the RFI to the producer(s) of the goods in China or Vietnam.

² The term "exporters" includes producers and vendors of subject goods imported into Canada.

³ This value may include non-subject goods.

[15] While some of the export sales of goods from China and Vietnam involve trading companies, in most instances the goods are shipped directly to Canada from China or Vietnam and the producer in China or Vietnam is considered to be the exporter of the goods. However, some goods originating in China or Vietnam may be shipped indirectly to Canada through other countries. In these situations, the exporter of the goods is generally located in the intermediary country.

[16] The CBSA received ten complete responses to the RFI from sampled exporters of subject goods. These were from five producers located in China, four producers located in Vietnam and one vendor located in Korea.

[17] In June 2009, the CBSA conducted on-site verifications of all exporter submissions as follows:

China

- Chu-Shun Shoe Factory
- Mudanjiang Baiyue Shoemaking Company Limited
- Suzhou New World Rubber Company Limited
- Wuhu Fengxue Rubber Company Limited
- Wuhu Hwasong Footwear Company Limited

Vietnam

- Cong Ty Tnhh Stateway Vietnam
- Fulgent Sun Footwear Company Limited
- Pou Yuen Vietnam Company Limited
- Vinh Long Footwear Company Limited

[18] In addition, a submission received from TW Sports Inc., a Korean vendor of the subject goods, was verified at the premises of Wuhu Fengxue Rubber Company Limited.

[19] The information provided by these exporters was verified for the purpose of determining a margin of dumping, and the nine exporters were considered cooperative sampled exporters for the purpose of the final determination.

[20] The CBSA received six incomplete submissions from sampled exporters located in the United States, Hong Kong, China and Vietnam. Desk audits were performed by the CBSA on these submissions. All of these exporters provided incomplete responses to the supplemental RFIs and information provided by these exporters could not be used for the purpose of determining specific margins of dumping by exporter. Exporters that provided incomplete responses or did not respond to the RFI were considered uncooperative sampled exporters for the purpose of the final determination.

[21] The CBSA also received three voluntary submissions from non-sampled exporters located in China. Desk audits were performed by the CBSA on these submissions. Only one submission, from Yingde Arca Footwear Corporation, was considered to be complete. This exporter was considered to be a cooperative non-sampled exporter. The other exporters were considered to be uncooperative non-sampled exporters.

Importers

[22] At the initiation of the investigation, the CBSA identified 1,637 importers potentially importing the subject goods from China and Vietnam during the POI, based on a review of customs accounting documents and information provided in the complaint. Of these, 153 imported footwear in quantities with a value of \$200,000⁴ or more. These importers account for 91% of the quantity of all waterproof footwear imported into Canada during the POI from China and Vietnam.

[23] The CBSA sent an RFI to each of the 153 importers of subject goods that imported in quantities valued at \$200,000 or more during the POI. Other importers were not provided with an RFI and were not requested to provide information. However, the RFI was available to non-sampled importers upon request and they were provided the opportunity to submit information. The CBSA received 28 responses to the RFI from sampled importers of subject goods.

PRODUCT DESCRIPTION

Product Definition

[24] For purposes of this investigation, the subject goods originating in or exported from the People's Republic of China are defined as:

“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 Tribunal 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.

⁴ This value may include non-subject goods.

[25] For purposes of this investigation, the subject goods originating in or exported from Vietnam are defined as:

“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.

Additional Product Information⁵

[26] Waterproof footwear described as “waterproof rubber footwear” is produced, wholly or in part of natural rubber and/or synthetic rubber, by vulcanization, injection moulding, cementing or other processes. The term synthetic rubber includes TPR.

[27] Waterproof footwear described as “waterproof plastic footwear” is constructed wholly or in part of plastic. It is made from plastic resins by injection moulding or other processes. The term “plastic” includes polyvinyl chloride (PVC), polyurethane (PU), ethylene vinyl acetate (EVA) and other plastics. PVC is the plastic most commonly used to date in this type of footwear.

[28] Waterproof bottoms are boat-like components intended for incorporation in finished waterproof footwear. Waterproof bottoms are normally produced through vulcanization, injection-moulding and/or cementing processes. The waterproof bottom can consist of rubber, TPR, plastic or any combination of these materials. Where more than one of these materials is used in the waterproof bottom, the material with the greatest surface area will be considered as the defining material for the waterproof bottom.

[29] “Top” refers to the component which is attached to a waterproof bottom by stitching or other means.

[30] “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.

⁵ This section is taken from the complaint. CBSA Dumping Exhibit #2, non-confidential version of the complaint, pages 8 and 9.

[31] Waterproof footwear includes footwear worn over the foot, with or without liners, linings, fasteners or safety features. These include red sole rubber boots, rain boots, hunting and fishing boots. In certain styles, such as duck shoes or winter boots, a boat-like (or shell-like) waterproof bottom may have trimmings, attachments, liners, collars or tops of synthetic or natural fabric, leather or imitation leather, or other materials. In addition, footwear that incorporates decorative stitching near the sole in the moulded or vulcanized boat-like component of the footwear is considered to be subject goods.

[32] Over-the-shoe rubbers or overshoes are not considered to be subject goods.

[33] The product range of subject goods includes footwear manufactured for men, women, youth, and children.

[34] “*Waterproof*” is defined as follows:

If the exterior of the bottom is partially submerged in water for a period of 24 hours, and water is not detected on the inside surface of the footwear, the sample is considered waterproof.

Production Process⁶

[35] Waterproof rubber footwear or a waterproof bottom may be produced by injection moulding or by the traditional method of cutting sheets of rubber and assembling them either by cementing and/or vulcanizing; or a combination of these processes. Waterproof footwear may also be produced in combination with the stitched-product process. The combined stitched-product process would produce, for example, a rubber bottom, nylon-top or other synthetic fabric top, or leather top winter boot.

[36] With the injection-moulding process, a granulated chemical compound of TPR or plastic is heated and injected into steel moulds installed in moulding machines. Each mould dictates the size, style and number of colours of a moulded item. The compound is fed from a hopper into a heated barrel and a screw inside the barrel then injects the molten compound into a mould. The resulting product consists of an unfinished waterproof bottom or a waterproof boot. The moulded items are then cooled, extracted and trimmed. Components and markings are then added before the finished footwear is packed for shipping.

[37] The stitched-product process consists of cutting and sewing uppers of various materials, both natural and synthetic, including leather and imitation leather, boot collars, liners and various other components. These pieces are assembled and affixed, as required, to the injected bottoms described earlier.

[38] The vulcanization or lay-up process requires the preparation of a rubber compound that is calendered into sheeting. Footwear parts are then cut from the sheets of rubber, laid up on forms and secured with rubber cement. The laid-up footwear is then vulcanized in an oven so that the rubber is irreversibly cured.

⁶ This section is taken from the complaint. CBSA Dumping Exhibit #2, non-confidential version of the complaint, pages 7 and 8.

[39] Waterproof rubber footwear or a waterproof bottom produced in a combined process would include such processes as cementing a vulcanized sole to a moulded component to form the waterproof footwear or waterproof bottom.

[40] The way in which production operations are arranged varies from company to company from typical assembly-line operations, where each worker performs a specific task, to work modules consisting of a small team working together on a particular product from start to finish.

Classification of Imports

[41] The waterproof footwear subject to this investigation are normally imported into Canada under the following Harmonized System (HS) classification numbers:

6401.10.11.00	6402.19.90.90	6404.11.99.90
6401.10.19.00	6402.91.10.00	6404.19.90.20
6401.10.20.00	6402.91.90.91	6404.19.90.91
6401.92.11.00	6402.91.90.92	6404.19.90.92
6401.92.12.00	6402.91.90.93	6404.19.90.93
6401.92.91.90	6403.19.90.90	
6401.92.92.90	6403.40.00.10	
6401.99.11.00	6403.91.00.91	
6401.99.12.00	6403.91.00.92	
6401.99.19.00	6403.91.00.93	
6401.99.20.00		

[42] This listing of HS codes is for convenience of reference only. Refer to the product definition and additional product information for authoritative details regarding the subject goods.

CANADIAN INDUSTRY

[43] The Canadian industry for the subject footwear is composed of six producers. The names and addresses of the producers are:

Air Boss Defence
881, rue Landry
Acton Vale, QC J0H 1A0

Baffin Inc.
346 Arvin Avenue
Stoney Creek, ON L8E 2M5

Chaussures Yéti Inc.
9935, boul. Saint-Vital
Montréal-Nord, QC H1H 4S5

Genfoot Inc.
1940, 55^e Avenue
Montréal, QC H4T 3H3

Hichaud Inc.
2485, rue Neuviale
Québec, QC G1P 3A6

Rallye Footwear Inc.
9777, rue Colbert
Anjou, QC H1J 1Z9

IMPORTS INTO CANADA

[44] During the final phase of the investigation, the CBSA refined the estimated volume of imports based on information from its internal Customs Commercial System (CCS), customs accounting documents and other information received from exporters and importers.

[45] The following table presents the CBSA's estimates of the volume of imports for purposes of the final determination. The CBSA based its estimates of imports on CCS data under HS heading 6401 and on information received from exporters and importers relating to goods imported under HS headings 6402, 6403 and 6404.

Imports of Waterproof Footwear (Oct. 1, 2007 to Sept. 30, 2008)

Country	Pairs	% of Total
China	1,764,032	65.8%
Vietnam	466,558	17.4%
Other Countries	451,219	16.8%
Total Imports	2,681,809	100.0%

INVESTIGATION PROCESS

[46] Information was requested from known and possible exporters, vendors and importers, concerning shipments of subject goods released into Canada during the POI. Non-sampled exporters and importers were not requested to respond to an RFI. However, any importer or exporter of subject goods could request an RFI from the CBSA and choose to participate in the investigation.

[47] Aside from the aforementioned exporters in China and Vietnam which provided complete information and fully cooperated for purposes of the final determination, several exporters and trading companies provided incomplete or deficient RFI replies. Information from these companies has not been taken into consideration for purposes of the final determination.

[48] As part of the final stage of the investigation, no case briefs or reply submissions were provided by the legal representatives of the complainant, the exporters from China or Vietnam, vendors of the subject goods or by importers in Canada.

[49] Under Article 15 of the World Trade Organization (WTO) Anti-dumping Agreement, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As China and Vietnam are listed on the Development Assistance Committee (DAC) *List of Official Development Assistance (ODA) Aid Recipients* maintained by the Organization for Economic Co-operation and Development (OECD), the President recognizes China and Vietnam as developing countries for purposes of actions taken pursuant to SIMA.

[50] Accordingly, the obligation under Article 15 of the WTO Anti-dumping Agreement was met by providing the opportunity for exporters to submit price undertakings. In this particular investigation, the CBSA did not receive any proposals for undertakings from any of the identified sampled exporters in China and Vietnam.

DUMPING INVESTIGATION

CHINA

Normal Value

[51] The normal value of goods sold to importers in Canada is generally based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, pursuant to paragraph 19(b) of SIMA.

[52] For purposes of the final determination, normal values could not be established on the basis of the domestic selling prices of the goods as all cooperative sampled exporters are export oriented firms that do not have domestic sales of like goods. As a consequence, all normal values were determined pursuant to paragraph 19(b) of SIMA on the basis of the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and other costs, and a reasonable amount for profits.

[53] For Chinese cooperative sampled exporters, the costs of production of the goods and a reasonable amount for administrative, selling and all other costs were based on verified data provided by the exporters.

AMOUNT FOR PROFIT

[54] For purposes of the preliminary determination, the amount for profit used for cooperative exporters without domestic sales was based on the weighted average profit earned on sales in China of three domestically-oriented footwear and sports apparel companies. The profit obtained from these companies and used for the preliminary determination was 25.2% of full costs.

[55] Following the preliminary determination, submissions from two Canadian importers were received regarding the amount of profit to be used by the CBSA for the final determination.

Profit Submission from Columbia Sportswear Canada LP (Columbia)

[56] On July 13, 2009, a submission on the issue of profit in China was received from Columbia, an importer of the subject goods. The submission discussed issues of trade level in relation to the three domestically-oriented companies selected by the CBSA for the preliminary determination. Columbia argued that given the vertical integration of those companies, from manufacturing to retail sales, they could not be considered a reasonable comparison to the cooperative exporters that only produce under contract for other companies who own the brand name. Columbia's submission also contained a study on profit prepared on their behalf by Ernst & Young LLP.

[57] The Ernst & Young LLP profit study was twofold. It first provided revised profit calculations for the three Chinese domestically-oriented companies initially used by the CBSA with the addition of another similar corporation to the group: Li Ning Company Limited, a well-known manufacturer and retailer in the Chinese market. Ernst & Young LLP calculated profit for these four companies by subtracting amounts related to revenue generated by trademarks and other intangibles as well as by government subsidies from their net profit. Ernst & Young LLP argued that the trademark adjustment was necessary to account for the fact that the four domestically-oriented Chinese companies own their brand names and trademarks while the cooperative exporters only manufacture under contract for other companies who own the brand name. Government grants were removed following the demonstration by Ernst & Young LLP that they are non-operating income items not related to the main business of these companies.

[58] The Ernst & Young LLP study then proceeded to use a second method for estimating profit by which it conducted a new search through public and private databases for Chinese contract manufacturers (companies producing under and for a brand name they do not own) meeting a long list of pre-established criteria. From this search, Ernst & Young LLP derived its own sample population to be used in calculating the average profit for China.

[59] Ernst & Young LLP did not consider the first method appropriate as the companies comprising the four domestically-oriented Chinese companies, even after adjustments, sell to a different trade level than the cooperative exporters.

Profit Submission from Chaussures Régence Inc. (Régence)

[60] On July 10, 2009, a submission on the determination of an amount for profit in China was presented by Régence, an importer of subject goods.

[61] Régence's submission argued that manufacturers selling to the retail level should not be used in calculating profit. It suggested that the profit derived from the three domestically-oriented Chinese companies that the CBSA used for the preliminary determination could not be used as these companies operated at both the manufacturer and retail levels.

[62] Régence selected four Chinese companies for its study. It suggested that all of these companies were considered similar to the cooperative exporters as they all mostly operate as contract manufacturers for foreign brands.

CBSA Position on Submissions

[63] In regards to the Columbia submission, the CBSA is of the opinion that the first method for calculating profit in China (using the four domestically-oriented Chinese companies with adjustments) is a fair and reasonable approach. All four companies operate exclusively in the domestic market and sell goods which fall within the same general category as the subject goods, which is in line with subparagraph 11(1)(b)(iv) of *Special Import Measures Regulations*⁷ (SIMR). The adjustments proposed by Columbia also permit a better comparison with the cooperative exporters.

[64] The CBSA did not accept the second method proposed by Columbia as the companies making up the final sample are export-oriented companies. In this regard, the CBSA conducted its own research of public records on these companies and determined that all of these corporations sell exclusively, or almost exclusively, to export-markets. These findings are confirmed by the terms of reference of the Ernst & Young LLP market study as there is no mention of exclusion for export-oriented companies. Under paragraph 11(1)(b) of the SIMR, an amount for profit must be based on sales in the domestic market.

[65] The Régence submission was also rejected for the same reasons as the CBSA's own research determined that the four companies in the Régence submission are exclusively, or almost exclusively, export-oriented.

[66] The CBSA used the three initially selected domestically-oriented Chinese companies. The CBSA also included Li Ning Company Limited in its calculation as proposed by the Ernst & Young LLP study. As well, the CBSA adjusted the profit for these four companies to account for revenue generated by trademarks, pursuant to paragraph 5(d) of the SIMR. Government grants were also excluded from revenue as it constitutes non-operating income.

[67] While the CBSA does consider Columbia's comments on the question of trade level relevant in that the four companies used for profit are vertically integrated while the cooperative exporters are only contract manufacturers, there was no information on the record to justify an adjustment for trade level. Furthermore, the five Chinese companies for which normal values are being determined are export oriented and do not have domestic sales. An adjustment for the differences in trade level is done *de facto* because of the lower export administrative, selling and other costs of the goods shipped to Canada which does not include those additional domestic costs, charges or expenses that would be included in the four Chinese companies' costs for their domestic sales. As a result, a trade level adjustment is not warranted.

[68] Consequently, the profit used for final determination for the five cooperative exporters without domestic sales is the weighted average profit of China Hongxing Sports Limited, ANTA Sports Products Limited, Xtep International Holdings Limited and Li Ning Company Limited. The weighted average profit of these companies for 2008 is established in accordance with subparagraph 11(1)(b)(iv) of the SIMR.

⁷ S.O.R. /84 – 927.

Export Price

[69] The export price of goods sold to importers in Canada is generally based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price, pursuant to section 24 of SIMA. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods, as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

[70] Export prices of goods of cooperative sampled exporters were determined using reported export pricing data provided by the exporters of the goods.

[71] For goods shipped directly to Canada from China, the exporter for SIMA purposes is usually the Chinese producer of the goods (i.e., it is usually the producer which manufactures, ships and sells the goods to Canada). However, two of the five producers in China have a related trading company (i.e., a related intermediary) located elsewhere in China or in separate customs territories which are involved in the export sale of goods to Canada. While the goods are shipped directly to Canada from the producer's facilities, frequently, there is a transfer price between the Chinese producer and the related intermediary.

[72] However, it was found that the producers and related intermediaries operate as a single business entity on sales of subject goods to Canada during the POI. Therefore, for purposes of the final determination, where the cooperating producers in China were selling to Canada through a related intermediary, the selling price from the related intermediary to the importer in Canada was used as the basis for determining export prices under section 24 of SIMA.

[73] For one of the five Chinese producers, Wuhu Hwasong Footwear Company Limited, the export price was determined to be its selling price to its unrelated vendor, TW Sports Incorporated, as this transaction represents the first arm's length transaction in the exportation of the subject goods to Canada.

Results of the Investigation

[74] Given the large number of exporters, the CBSA relied upon paragraph 30.3(1)(a) of SIMA, which provides that margins of dumping may be determined in relation to the largest percentage of goods of each country (sample) that can reasonably be investigated if it is determined that it would be impracticable to determine a margin of dumping in relation to all goods because of the number of exporters, producers or importers.

[75] Information provided by cooperative sampled exporters and importers was used to determine the normal value and export price and resulting margin of dumping by exporter pursuant to subsection 30.2(1) of SIMA.

[76] All subject goods imported into Canada during the POI from any exporter are included in the determination of the margin of dumping of goods of that exporter. The margin of dumping by exporter is equal to the amount by which the total normal value exceeds the total export price of the goods, expressed as a percentage of the total export price. Where the total normal value of the goods does not exceed the total export price of the goods, the margin of dumping is zero.

[77] The normal value of goods of uncooperative sampled exporters was determined by advancing the export price by the highest amount by which the normal value exceeds the export price of an individual transaction of any subject goods of a cooperative sampled exporter of China, expressed as a percentage of export price, based on a ministerial specification pursuant to section 29 of SIMA.

[78] Pursuant to section 30.1 of SIMA, the margin of dumping of goods of China was based on the weighted average margin of dumping of each cooperative sampled exporter and of each uncooperative sampled exporter of the goods of China.

[79] The results reveal that of the subject waterproof footwear from China, 93.9% was dumped by a margin of 36.6%, expressed as a percentage of the export price.

RESULTS BY EXPORTER - CHINA

[80] Specific margin of dumping details relating to each of the Chinese exporters that cooperated in the CBSA's dumping investigation are as follows:

CHU-SHUN SHOE FACTORY

[81] Chu-Shun Shoe Factory (CSS) is a foreign-owned private enterprise in Dongguan City, Guangdong Province, China. CSS produces vulcanized shoes, walking shoes and sport shoes. The CBSA conducted on-site verification of CSS's responses on June 25 and June 26, 2009.

[82] For export sales to Canada, the unrelated Canadian importer sends a purchase order to a trading company located in Chinese Taipei. This trading company is related to CSS. CSS confirms the order and arranges for production. Exports to Canada are shipped directly from the factory in China to the unrelated importer in Canada. Export selling price data including applicable export price adjustments, provided by CSS in its submission was used as the basis for determining export price.

[83] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by CSS were not dumped.

MUDANJIANG BAIYUE SHOEMAKING COMPANY LIMITED

[84] Mudanjiang Baiyue Shoemaking Company Limited (Baiyue) is a joint-venture limited liability company. The company is located in Mudanjiang City, Heilongjiang Province, China. Baiyue produces slush moulded footwear, nylon boots and waterproof boots. The CBSA conducted on-site verification of Baiyue's responses from June 8 to June 10, 2009.

[85] Exports to Canada are sold and shipped directly to an unrelated importer in Canada. Export selling price data, including applicable export price adjustments, provided by Baiyue in its submission was used as the basis for determining export price for purposes of the final determination.

[86] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Baiyue were dumped by a margin of 4.6%, expressed as a percentage of export price.

SUZHOU NEW WORLD RUBBER COMPANY LIMITED

[87] Suzhou New World Rubber Co., Ltd. (SNW) is a wholly foreign-owned limited liability company in Suzhou City, Jiangsu Province, China. SNW produces all-over rubber wellies, rubber chukkas, shoes and clogs. The CBSA conducted on-site verification of SNW's responses on June 12, June 13 and June 15, 2009.

[88] Exports to Canada are sold and shipped directly to an unrelated importer in Canada. Export selling price data, including applicable export price adjustments provided by SNW in its submission, was used as the basis for determining export price.

[89] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by SNW were dumped by a margin of 15.1%, expressed as a percentage of export price.

WUHU FENGXUE RUBBER COMPANY LIMITED

[90] Wuhu Fengxue Rubber Company Limited is a privately-held limited company incorporated and operating in China. The company was established in 2004 and runs two production lines. The CBSA conducted on-site verification of Wuhu Fengxue's responses on June 20, June 22 and June 23, 2009.

[91] Exports to Canada are sold through its related sales arm, TW Sports Inc., a privately-held limited company operating from Korea. Export selling price data provided by Wuhu Fengxue and TW Sports in its submission was used as the basis for determining export price for purposes of the final determination.

[92] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Wuhu Fengxue were dumped by a margin of 8.9%, expressed as a percentage of export price.

WUHU Hwasong FOOTWEAR COMPANY LIMITED

[93] Wuhu Hwasong Footwear Co. Ltd. is a privately-held limited company incorporated and operating in China. The company was established in 2004 and runs eight production lines. The CBSA conducted on-site verification of Wuhu Hwasong's responses from June 17 to June 19, 2009.

[94] Exports to Canada are sold through its unrelated sales arm, TW Sports Inc., a privately-held limited company operating from Korea. Export selling price data provided by Wuhu Hwasong in its submission was used as the basis for determining export price for purposes of the final determination.

[95] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Wuhu Hwasong were dumped by a margin of 14.4%, expressed as a percentage of the export price.

Margins of Dumping - Other Exporters

[96] The normal value of goods of uncooperative sampled exporters and of those that provided voluntary submissions that were incomplete were determined based on a ministerial specification pursuant to section 29 of SIMA. The normal value was based on the export price as determined under section 24 of SIMA plus an amount equal to 43.8% of that export price, which represents the highest amount by which the normal value exceeds the export price of an individual transaction of any subject goods of a cooperative sampled exporter of China, expressed as a percentage of export price. The resultant margin of dumping was 43.8%, expressed as a percentage of export price.

[97] The margin of dumping of goods of one cooperative non-sampled exporter (goods not included in the percentage), pursuant to subsection 30.3(2) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and other costs, and a reasonable amount for profits, as described above, is 19.9%, expressed as a percentage of export price.

[98] The margin of dumping of goods of non-sampled exporters, pursuant to subsection 30.3(3) of SIMA, based on the weighted average of margins of dumping by cooperative sampled exporter in China, not taking into account, pursuant to subsection 25.2(3) of the SIMR, any margin of dumping by exporter that is insignificant (less than 2% of export price of the goods) is 11.8%, expressed as a percentage of export price.

VIETNAM

Normal Value

[99] The normal value of goods sold to importers in Canada is generally based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, pursuant to paragraph 19(b) of SIMA.

[100] For purpose of the final determination, normal values could not be established on the basis of the domestic selling prices of the goods as all cooperative sampled exporters are export oriented firms that do not have domestic sales of like goods. As a consequence, all normal values were determined pursuant to paragraph 19(b) on the basis of the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and other costs, and a reasonable amount for profits.

[101] For Vietnamese cooperative sampled exporters, the costs of production of the goods and a reasonable amount for administrative, selling and all other costs were based on verified data provided by the exporters.

Amount for Profit

[102] For purposes of the preliminary determination, in the absence of available information, the amount for profit used for cooperative exporters without domestic sales was based on the weighted average profit earned on sales in China of three domestically-oriented footwear and sports apparel companies. The profit obtained from these companies and used for the preliminary determination was 25.2% of full costs.

[103] After the preliminary determination, the CBSA contacted the Vietnam Leather and Footwear Association (LEFASO) requesting financial information for Vietnamese footwear manufacturers that had profitable domestic sales during the POI. LEFASO provided information relating to domestic sales of footwear which was reviewed by the CBSA and used, in conjunction with other information gathered during on-site verification, for purposes of determining a reasonable amount for profit.

[104] For purposes of the final determination, company specific information was not available to determine a reasonable amount for profit for three of the four Vietnamese exporters. A reasonable amount for profit for these three exporters was based on the weighted average profit earned on domestic sales of footwear and footwear components by producers located in that country and was established in accordance with subparagraph 11(1)(b)(iv) of the SIMR.

[105] Since information was available to determine a reasonable amount for profit for the fourth Vietnamese exporter, Pou Yuen Vietnam Company Limited, its own profit on domestic sales of related products was used in the determination of normal values.

Export Price

[106] The export price of goods sold to importers in Canada is generally based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price, pursuant to section 24 of SIMA. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods, as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

[107] Export prices of goods of cooperative sampled exporters were determined using reported export pricing data provided by the exporters of the goods.

[108] The four cooperative exporters from Vietnam are legally constructed of several distinct entities performing different functions, i.e., producing the goods or selling the goods. However, these exporters are owned by four different conglomerates and each conglomerate operates as one business for purposes of exporting the subject goods to Canada. Furthermore, each conglomerate filed a single response to the dumping RFI. Therefore, these exporters are referred to as one entity for the purpose of the investigation and the selling prices from the vendors to the importers were used as the basis for determining export prices under section 24 of SIMA.

Results of the Investigation

[109] Given the large number of exporters, the CBSA relied upon paragraph 30.3(1)(a) of SIMA, which provides that margins of dumping may be determined in relation to the largest percentage of goods of each country (sample) that can reasonably be investigated if it is determined that it would be impracticable to determine a margin of dumping in relation to all goods because of the number of exporters, producers or importers.

[110] Information provided by cooperative sampled exporters and importers was used to determine the normal value and export price and resulting margin of dumping by exporter pursuant to subsection 30.2(1) of SIMA. When the export price is less than the normal value, the difference is the margin of dumping.

[111] All subject goods imported into Canada during the POI from any exporter are included in the determination of the margin of dumping of goods of that exporter. The margin of dumping by exporter is equal to the amount by which the total normal value exceeds the total export price of the goods, expressed as a percentage of the total export price. Where the total normal value of the goods does not exceed the total export price of the goods, the margin of dumping is zero.

[112] The normal value of goods of uncooperative sampled exporters was determined by advancing the export price by the highest amount by which the normal value exceeds the export price of an individual transaction of any subject goods of a cooperative sampled exporter of Vietnam, expressed as a percentage of export price, based on a ministerial specification pursuant to section 29 of SIMA.

[113] Pursuant to section 30.1 of SIMA, the margin of dumping of goods of Vietnam was based on the weighted average margin of dumping of each cooperative sampled exporter and of each uncooperative sampled exporter of the goods of Vietnam.

[114] The results reveal that of the subject waterproof footwear from Vietnam, 63.4% was dumped by a margin of 12.0%, expressed as a percentage of the export price.

RESULTS BY EXPORTER - VIETNAM

[115] Specific margin of dumping details relating to each of the Vietnamese exporters that cooperated in the CBSA's dumping investigation are as follows:

CONG TY TNHH STATEWAY VIETNAM

[116] Cong Ty TNHH Giay Stateway (Stateway) is a privately-held limited company. Stateway and its sale arm, Stateway Enterprise Ltd., are 100% owned by Symphony Holdings Limited, a public company listed in Hong Kong but incorporated in Bermuda. The principal activities of the Group are the manufacturing and trading of footwear, property investments and investment holding. The CBSA conducted on-site verification of Stateway's responses on June 15 and from June 22 to June 24, 2009.

[117] Exports to Canada are sold via Stateway Enterprise Ltd. and are shipped directly from Vietnam to customers in Canada. Export selling price data, including applicable export price adjustment, provided by Stateway in its submission was used as the basis for determining export price for purposes of the final determination.

[118] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Stateway were not dumped.

FULGENT SUN FOOTWEAR COMPANY LIMITED

[119] Fulgent Sun Footwear Company Limited (Fulgent) is a foreign-owned company established under the Law of Foreign Investment in Vietnam. Fulgent Sun Enterprises Ltd. is the parent company that also owns Capital Bright International Trading Co. Ltd. Fulgent designs and produces footwear. The CBSA conducted on-site verification of Fulgent's responses from June 16 to June 18, 2009.

[120] Exports to Canada are sold via Capital Bright International Trading Co. Ltd. and are shipped directly from Vietnam to customers in Canada. Export selling data, including applicable export price adjustments, provided by Fulgent in its submission was used as the basis for determining export price for purposes of the final determination.

[121] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Fulgent were dumped by a margin of 3.4%, expressed as a percentage of export price.

POU YUEN VIETNAM COMPANY LIMITED

[122] Pou Yuen Vietnam Company Limited (Pou Yuen) is incorporated in Vietnam as a 100% foreign invested enterprise. The principal activities of the company are to produce and sell athletic shoes, tourists' leather and synthetic shoes, waterproof footwear, vacuum cleaner machines, and conveyor belts. The CBSA conducted on-site verification of Pou Yuen's responses from June 11 to June 13, 2009.

[123] Exports to Canada are shipped from Vietnam to unrelated customers in Canada. Export selling price data, including applicable export price adjustments, provided by Pou Yuen in its submission was used as the basis for determining export price for purposes of the final determination.

[124] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Pou Yuen were dumped by a margin of 7.3%, expressed as a percentage of export price.

VINH LONG FOOTWEAR COMPANY LIMITED

[125] Vinh Long Footwear Company Limited (Vinh Long) is a limited liability company incorporated in Vietnam. Vinh Long Footwear is a footwear manufacturer. The principal activities of the company are to produce and sell footwear to the specifications of their customers. The CBSA conducted on-site verification of Vinh Long's responses from June 8 to June 10, 2009.

[126] Exports to Canada are sold via Vinh Long's related trading arm, Shinny East Limited, located in Chinese Taipei and are shipped from Vietnam to unrelated customers in Canada. Export selling price data, including applicable export price adjustments, provided by the company in its submission was used as the basis for determining export price for purposes of the final determination.

[127] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Vinh Long were dumped by a margin of 15.8%, expressed as a percentage of the export price.

Margins of Dumping - Other Exporters

[128] The normal value of goods of uncooperative sampled exporters was determined based on a ministerial specification pursuant to section 29 of SIMA. The normal value was based on the export price as determined under section 24 of SIMA plus an amount equal to 32.4% of that export price, which represents the highest amount by which the normal value exceeds the export price of an individual transaction of any subject goods of a cooperative sampled exporter of Vietnam, expressed as a percentage of export price. The resultant margin of dumping was 32.4%, expressed as a percentage of export price.

[129] The margin of dumping of goods of non-sampled exporters, pursuant to subsection 30.3(3) of SIMA, based on the weighted average of margins of dumping by cooperative sampled exporter in China, not taking into account, pursuant to subsection 25.2(3) of the SIMR, any margin of dumping by exporter that is insignificant (less than 2% of export price of the goods) is 12.8%, expressed as a percentage of export price.

SUMMARY OF RESULTS – MARGIN OF DUMPING BY COUNTRY

Period of Investigation – October 1, 2007 to September 30, 2008

Country	Margin of Dumping	Imports by Country as Percentage of Total Imports From All Countries	Volume of Dumped Goods as Percentage of Total Imports From All Countries
China	36.6%	65.8%	61.8%
Vietnam	12.0%	17.4%	11.0%

[130] Pursuant to subsection 41(1) of SIMA, in respect of goods of a country or countries, the President shall cause the investigation to be terminated if, where on the available evidence, he is satisfied that the margin of dumping of the goods by country is insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% is defined as insignificant. As shown in the table above, the margins of dumping of subject waterproof footwear from China and Vietnam are above 2% and are, therefore, not insignificant.

DECISION

[131] The President of the CBSA is satisfied that certain waterproof footwear originating in or exported from the People's Republic of China and the Socialist Republic of Vietnam, have been dumped and that the margins of dumping are not insignificant. Consequently, on August 26, 2009, the President of the CBSA made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA respecting the subject goods.

[132] A summary of the margins of dumping relating to the final determination of dumping is provided in the Appendix.

FUTURE ACTION

[133] The provisional period began on May 28, 2009, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by September 25, 2009. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determination. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determination, which is available on the CBSA Web site at: <http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html>

[134] If the Tribunal finds that the dumped goods have not caused injury and do not threaten to cause injury, all proceedings relating to this investigation will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.

[135] If the Tribunal finds that the dumped goods have caused injury, the anti-dumping duties payable on subject goods released from CBSA during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released from the CBSA after the date of the Tribunal's finding will be subject to anti-dumping duty in an amount equal to the margin of dumping.

[136] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in customs accounting documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act* apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[137] Normal values have been provided to the cooperative exporters for future shipments to Canada in the event of an injury finding by the Tribunal. These normal values will come into effect the day after the date of the injury finding. Information regarding the normal values of subject goods should be obtained from the exporters.

[138] In the event of an injury finding by the Tribunal, normal values of goods of non-sampled exporters will be determined by advancing the export price by 11.8% for subject goods originating in or exported from China, and by 12.8% for subject goods originating in or exported from Vietnam, and normal values of goods of uncooperative exporters will be determined by advancing the export price by 43.8% for subject goods from China and by 32.4% for subject goods from Vietnam, based on a ministerial specification pursuant to section 29 of SIMA. Pursuant to subsection 3(1) of SIMA, anti-dumping duty is equal to the amount by which the normal value exceeds the export price of the imported goods.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[139] Under certain circumstances, anti-dumping duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping duty.

PUBLICATION

[140] A notice of final determination of dumping shall be published in the *Canada Gazette* pursuant to paragraph 41(3)(a) of SIMA.

INFORMATION

[141] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site at the address below. For further information, please contact the officers identified as follows:

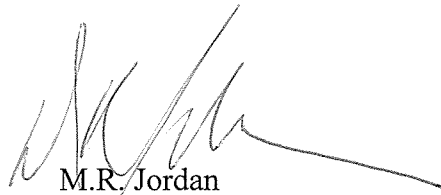
Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Program
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa, ON K1A 0L8
CANADA

Telephone: Robert Cousineau 613-954-7183
Véronique Pouliot 613-954-1641

Fax : 613-948-4844

E-mail : SIMAREgistry@cbsa-asfc.gc.ca

Web site : www.cbsa-asfc.gc.ca/sima-lmsi/er-rre/menu-eng.html



M.R. Jordan
Director General
Trade Programs Directorate

Attachments

APPENDIX - SUMMARY OF MARGINS OF DUMPING BY EXPORTER

**CERTAIN WATERPROOF FOOTWEAR ORIGINATING IN OR EXPORTED FROM
CHINA AND VIETNAM**

Exporters – China Origin Goods	Margin of Dumping*
<i>Cooperative Sampled Exporters:</i>	
Chu-Shun Shoes Factory	0.0%
Mudanjiang Baiyue Shoemaking Company Limited	4.6%
Suzhou New World Rubber Limited	15.1%
Wuhu Fengxue Rubber Company Limited	8.9%
Wuhu Hwasong Footwear Company Limited	14.4%
<i>Uncooperative Sampled and Non-Sampled Exporters</i>	43.8%
<i>Non-Sampled Exporters</i>	11.8%
<i>Cooperative Non-sampled Exporter:</i>	
Yingde Arca Footwear Corporation	19.9%
Exporters – Vietnam Origin Goods	Margin of Dumping
<i>Cooperative Sampled Exporters:</i>	
Cong Ty Tnhh Stateway Vietnam	0.0%
Fulgent Sun Footwear Company Limited	3.4%
Pou Yuen Vietnam Company Limited	7.3%
Vinh Long Footwear Company Limited	15.8%
<i>Uncooperative Sampled Exporters</i>	32.4%
<i>Non-Sampled Exporters</i>	12.8%

* Expressed as a percentage of export price.