

# A DAVID AND GOLIATH STORY

By Claude Boucher

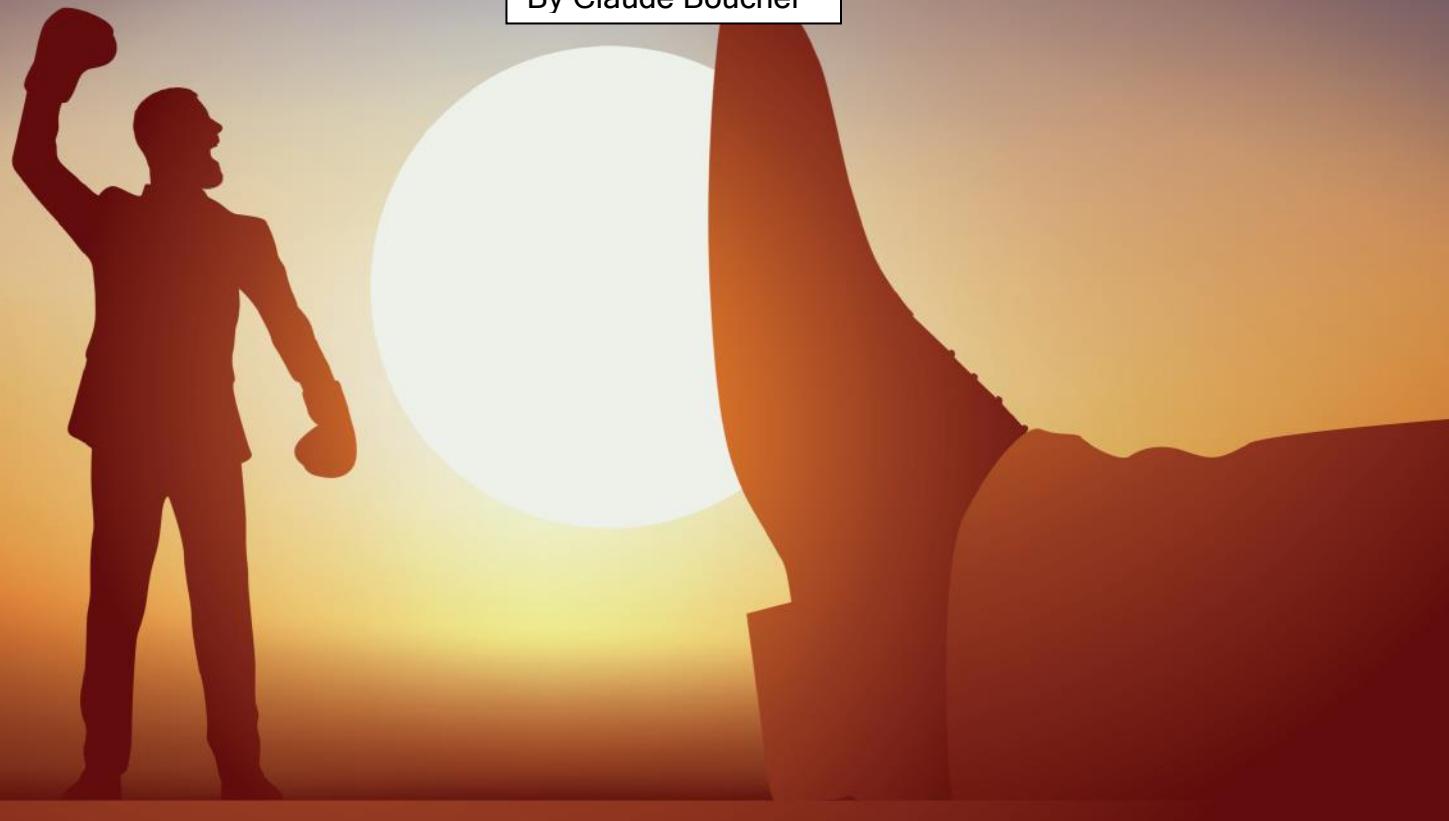


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**A major player in the Canadian transportation equipment industry has won a battle against a Chinese giant. Seeing its sales decline due to unfair competition from China International Marine Containers, Max-Atlas counterattacked using international trade rules and Canadian laws. The victory of the St-Jean-sur-Richelieu company could inspire other Quebec SMEs facing the same problem.**



Tibor Varga

President of Max-Atlas

Max-Atlas's reputation in the Canadian and American container chassis market is well established. Over nearly 30 years, the company, led by Tibor Varga, has delivered more than 20,000 container chassis throughout North America. But in 2018, Max-Atlas found that more and more of its loyal customers were opting for Chinese products imported by China International Marine Containers (CIMC). Varga is used to vigorous but fair competition, and he realized that this situation was quite different. He hired the

McMillan law firm to protect the company's interests. There was unfair competition or dumping under WTO rules.

"Max-Atlas was competing with American, Mexican and other Canadian producers," explains William Pellerin, who handled the case for McMillan. "In 2014–2015, they started to see Chinese products coming in. But in 2018, Chinese container chassis flooded the market. By the end of 2018, their big customers were starting to say they couldn't buy Max-Atlas anymore and had no choice but to buy Chinese."

Subsidized by the Chinese government, CIMC offers prices well below the subsistence minimum for Max-Atlas. McMillan undertook a complex process to determine whether CIMC's trade practices could justify the application of customs duties that would rebalance competition in Canada. Relying on World Trade Organization (WTO) rules and Canadian anti-dumping laws, McMillan filed a complaint with the Canada Border Services Agency.

There were two stages to the process: Max-Atlas first had to demonstrate to the CBSA that

The plaintiff's case featured thousands of pages on product description, production methods and costs, and the costs of shipping the product to Canada and importing it.

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"Imports are allowed into Canada at lower prices than we can offer here. There's nothing wrong with that, it's fair competition. Where it becomes a problem is when trade becomes unfair according to WTO rules. What we saw in this case was that the trade was not fair and equitable."

- William Pellerin, lawyer at McMillan LLP



Photo © Courtesy of McMillan

The second stage was equally important. The plaintiff had to show that the dumping was causing injury to Canadian manufacturers of the same products. This step took place before the Canadian International Trade Tribunal (CITT).

"The CITT also conducted a lengthy investigation that included a hearing, questionnaires, hundreds of pages to fill out, all of the companies' financial information, and many exchanges of briefs. It's the CITT that determines whether or not injury has been caused. In order for duties to be put in place, we needed to succeed in both stages."

Max-Atlas did in fact win its case on both counts. On February 3, the CBSA released its decision. The normal value (without dumping) of the Chinese container chassis was established at 59.1% of the export price. An equivalent duty was imposed to put the parties in a position of fair competition.

Unfortunately, Canadian anti-dumping measures are not retroactive, and only apply from the date of the decision. Max-Atlas's losses prior to the process are therefore not compensated. However, the legal process allows for a provisional duty to be set sometime after the investigation begins, a measure designed to prevent the company against which the complaint is directed from flooding the Canadian market while awaiting the final outcome.

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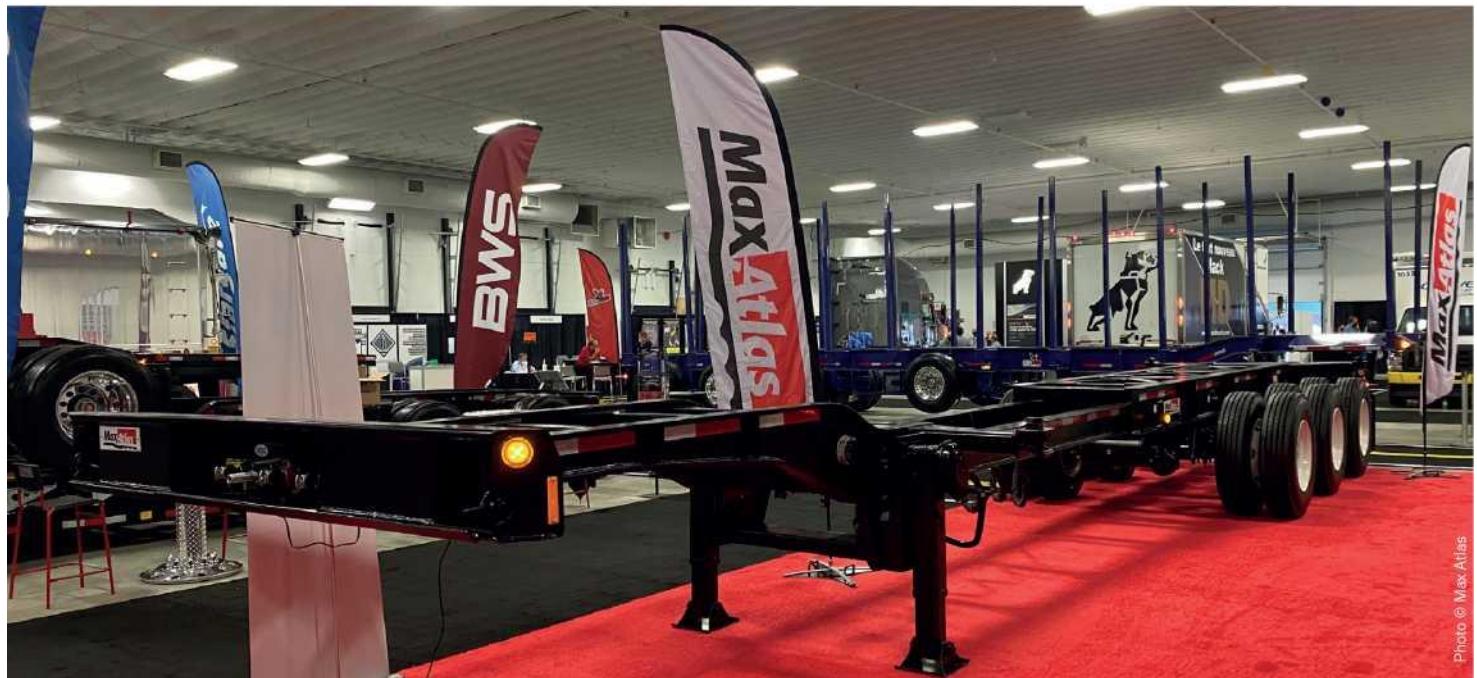


Photo © Max-Atlas

William Pellerin, who specializes in these cases at McMillan LLP, confirms that there are many anti-dumping cases under way, particularly in the steel industry, where world production capacity exceeds demand. According to Pellerin, the Canadian anti-dumping system works well, although it is costly and complex. "It's a system that is very strong, that protects domestic producers. It's not easy to navigate, and it's expensive. Max-Atlas really invested in bringing this case forward. But the company saw it as a necessary investment for its survival. As Mr. Varga said, without this case, he doesn't

think he would have been able to keep the St-Jean-sur-Richelieu plant alive."

The anti-dumping lawyer recommends that Canadian companies be vigilant and act quickly when in doubt.

"When customers start to tell you they can't buy from you anymore, that's the time to ask them questions, to understand where they're buying and why. Is it because of imports at lower prices? Don't wait until it's too late. We often have companies come to us when they're

almost down to zero production, having waited too long. But Max-Atlas did it right. They came to us fairly early and we were able to save their business."

And the result was not long in coming: Max-Atlas's order books are well filled once again. A true David and Goliath story.

Note: CBSA cases and decisions are public information. To view the CBSA decision, go to <https://www.cbsa-asfc.gc.ca/sima-lmsi-i-e/cc2021/cc2021-fd-eng.html>