THE
CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

LE TRIBUNAL
CANADIEN
DU COMMERCE
EXTÉRIEUR

CANADA

R E P O R T

SAFEGUARD REVIEW

RUBBER FOOTWEAR

GPT WITHDRAWAL REVIEW

SAFEGUARD REVIEW

SR-91-001

RUBBER FOOTWEAR

GPT WITHDRAWAL REVIEW

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THE CANADIAN INTERNATIONAL TRADE TRIBUNAL | LE TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

CANADA

CHAIRMAN PRÉSIDENT

October 31, 1991

The Honourable Don F. Mazankowski, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
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Dear Mr. Mazankowski:

In a letter dated February 16, 1989, the Honourable Michael Wilson instructed the Canadian International Trade Tribunal (the Tribunal), under section 19 of the *Canadian International Trade Tribunal Act*, to conduct inquiries into possible injury to the Canadian industry as a result of goods imported at the General Preferential Tariff (GPT) rates. He also requested that the Tribunal review cases where the GPT had been withdrawn and report its findings to the Minister of Finance.

The GPT was first made applicable to rubber footwear on July 1, 1974, when Canada adopted the GPT system. It was withdrawn the following year, in August 1975, in response to complaints from domestic producers. From 1975 to date, the status of GPT benefits for rubber footwear has been reviewed and the withdrawal extended on seven separate occasions. The most recent occasion was on January 19, 1989, when the Governor in Council extended the GPT Withdrawal Order for a period of three years. The January 19, 1989, GPT Order will expire on December 31, 1991, unless continued by the Governor in Council, following a review by the Tribunal.

Therefore, pursuant to section 7 of the *Canadian International Trade Tribunal Act*, I appointed W. Roy Hines, Presiding Member, Arthur B. Trudeau, Member, and Michèle Blouin, Member, to review the existing safeguard action applied to imports of rubber footwear from countries normally entitled to the GPT benefit. On behalf of the Tribunal, I am pleased to submit this report for your consideration.

In preparing its report, the Tribunal sought and reviewed submissions from the domestic producers and importers of rubber footwear. Relevant market, production and financial data were assembled and distributed to interested parties. A public hearing was held on August 26, 1991. Representatives of the Canadian producers of rubber footwear and a representative of the Shoe Manufacturers' Association of Canada appeared as witnesses and were questioned by the members of the Tribunal.

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In its report, the Tribunal concludes that the Canadian producers face a threat of injury from the reinstatement of the GPT benefit with respect to imports of subject rubber footwear, and that the continued withdrawal of the GPT benefit with respect to these imports will provide the industry with significant relief. Therefore, the Tribunal recommends that the withdrawal of the GPT with respect to imports of rubber footwear from GPT countries be extended until the scheduled expiry of the current phase of the GPT program on June 30, 1994. In addition, the Tribunal recommends that every consideration be given to the industry's request to remove rubber footwear from the list of goods eligible for GPT rates. The Tribunal's views on this matter are set out at pages 10 and 11 of the report.

Yours sincerely,

John Coleman

John C. Coleman

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INTRODUCTION

The General Preferential Tariff Program

On July 1, 1974, Canada introduced a temporary system of tariff preferences designated as the General Preferential Tariff (GPT) as part of an international system to assist developing countries expand their exports to developed country markets. Under the system, industrial goods originating in developing countries and territories[1] could enter Canada at the lower of the British Preferential Tariff (BPT) or two-thirds of the Most-Favoured-Nation (MFN) Tariff. A description of the General Preferential Program is attached as Appendix I.

Sections 36 and 38 of the *Customs Tariff* provide for the Governor in Council, on the recommendation of the Minister of Finance (the Minister), to withdraw the GPT benefit on any or all goods that originate in a beneficiary country. In a letter dated February 16, 1989, the Minister directed the Canadian International Trade Tribunal (the Tribunal), under section 19 of the *Canadian International Trade Tribunal Act*, to conduct an inquiry into any written complaint it received from a domestic producer alleging that like or directly competitive goods, which are being imported into Canada under the GPT, are causing or threatening to cause injury to that producer. In so doing, the Minister asked the Tribunal to take into account the economic factors generally recognized as relevant to a determination of injury, such as those contained in the General Agreement on Tariffs and Trade (GATT), the Anti-Dumping Code and the Code on Subsidies and Countervailing Duties, and to consider whether the withdrawal of the GPT on the product or products concerned would provide significant relief to the Canadian industry.

In those instances where the GPT had been withdrawn, the Minister directed the Tribunal to collect information related to any relief provided during the period that the withdrawal was in effect and to receive and review petitions from interested parties concerning the future of the measure.

The GPT was made applicable to rubber footwear on July 1, 1974, that is, at the same time as Canada adopted the GPT system. Under the GPT, rubber footwear was allowed to enter Canada at the duty rate of "free."[2] However, on August 28, 1975, in response to complaints from domestic manufacturers, the Governor in Council withdrew the GPT from all beneficiaries with respect to rubber footwear. As a result, the subject goods became dutiable at the MFN rate of 20 percent (except for exports from countries such as Malaysia, Sri Lanka and Zimbabwe, which qualified for duty-free access under

1. Currently, there are 163 countries and territories entitled to GPT benefits. A list of these countries as of January 1990 is attached as Appendix II.
2. As noted above, GPT tariff rates in Canada are normally set at two-thirds of the corresponding MFN rate or the BPT rate, whichever is lower. In the case of rubber footwear, the BPT rate was established at "free" and, consequently, the GPT rate for rubber footwear is "free."

the BPT). From 1975 to date, the status of GPT benefits for rubber footwear has been reviewed and the withdrawal extended on seven separate occasions.[3]

The most recent extension followed the Tariff Board's report on Reference No. 161.2 dated October 12, 1988. Evidence reviewed by the Tariff Board revealed that, at the end of 1987, the landed duty-paid prices of some categories of rubber footwear imported from South Korea, the main GPT supplier at that time, were still lower than the prices of comparable domestic products. This meant that, despite the safeguard action, there was continued downward price pressure in the marketplace. For this, and other reasons, the Tariff Board concluded that the reinstatement of the GPT rate to "free" would be injurious to Canadian producers and would result in further rationalization of the domestic industry, more plant closures and lower employment in areas where alternative employment opportunities are few or non-existent. Further to the Tariff Board's report, on January 19, 1989, the Governor in Council extended the withdrawal of the GPT with respect to rubber footwear until December 31, 1991.

Conduct of the Present Review

On February 22, 1991, the Tribunal issued a notice of expiry, inviting views on the future status of the GPT safeguard action on rubber footwear, which is currently in effect. Views for and against the reinstatement of the GPT were received. On May 8, 1991, the Tribunal issued a notice of review.

As part of this review, the Tribunal sent detailed questionnaires to the Canadian producers of rubber footwear and to 157 potential importers of the subject goods, requesting production, financial, import and market information, as well as other information covering the January 1, 1988, to March 31, 1991, period. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and confidential pre-hearing staff reports covering that period.

The record of this inquiry consists of all Tribunal's exhibits, including the public and confidential replies to questionnaires, all exhibits filed by parties at the hearing, the Tariff Board's reports covering previous reviews, documentation from parties in response to the Tribunal's notice of expiry, as well as the transcript of all proceedings. The public exhibits were made available to all parties.

Public and *in camera* hearings were held in Ottawa, Ontario, on August 26, 1991. The four companies comprising the Canadian rubber footwear industry and the Shoe Manufacturers' Association of Canada were represented by Mr. G.P. MacPherson and Ms. Naila Elfar of Corporation House Ltd.

No importers or exporters participated at the hearing.

TARIFF AND PRODUCT DESCRIPTION

The subject goods currently fall under the tariff items and respective tariff rates listed in Table 1.

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3. Extensions were granted on: June 24, 1976, P.C. 1976-1580; June 27, 1977, P.C. 1977-1787; December 20, 1979, P.C. 1979-3521; December 29, 1982, P.C. 1982-3938; July 25, 1984, P.C. 1984-2649; January 10, 1986, P.C. 1986-52; and January 19, 1989, P.C. 1989-51.

Table 1

Applicable Tariff Items

Tariff Item No.	Description of Goods	MFN	BPT	GPT	U.S.[4]
64.01	Waterproof footwear with outer soles and uppers of rubber or of plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes.				
6401.10	-Footwear incorporating a protective metal toe-cap				
6401.10.10	---Of rubber	20%	Free	Free	14%
	-Other footwear:				
6401.91	--Covering the knee				
6401.91.10	---Of rubber	20%	Free	Free	14%
6401.92	--Covering the ankle but not covering the knee				
	---Other:				
6401.92.91	----Of rubber	20%	Free	Free	14%
6401.99	--Other				
6401.99.10	---Of rubber	20%	Free	Free	14%
64.02	Other footwear with outer soles and uppers of rubber or plastics.				
6402.20	-Footwear with upper straps or thongs assembled to the sole by means of plugs				
6402.20.10	---Of rubber	20%	Free	Free	14%

4. Under the Canada-United States Free Trade Agreement (FTA), the Canadian duty rate on U.S. imports will be reduced by 2 percentage points per year and will be duty free on January 1, 1998. Prior to 1989, the MFN rate of 20 percent applied to U.S. imports. As a result of the FTA tariff reductions, the U.S. tariff rate on imports from Canada has fallen to 26.2 percent in 1991, from its MFN rate of 37.5 percent.

In more product specific terms, the rubber footwear subject to the withdrawal of the GPT include: all-rubber boots such as overshoes and galoshes; stretchable rubbers worn over the shoe (with or without lining zippers, buckles or other fasteners) such as men's toe rubbers; red sole rubber boots (often referred to as Wellingtons); waders such as those used by fishermen; certain footwear with safety features such as safety steel toes used in the lumber and mining industries; and footwear with a flat sole and an unlined v-shaped thong or cross-strap that goes over the instep of the foot such as certain beach thongs or flip-flops.[5]

There are various ways to manufacture the subject rubber footwear. In the traditional lay-up process, a rubber compound is prepared; the compound is calendered into sheeting; the sheeting, with or without a textile lining, is die-cut into components; the components are assembled (laid up) with rubber cement on a conveyer-borne last; and the assembled boot or shoe is vulcanized.

The lay-up process is labour intensive. However, the process is capable of producing a wide range of rubber footwear (including specialty items) and its use is economically advantageous for short production runs.

Technical advances have made it possible to manufacture rubber footwear by injection moulding and compression moulding processes. (Another form of moulding is slush moulding used to produce vinyl footwear - not under study here.) In the injection moulding process, a hot thermoplastic rubber compound is injected under high pressure into a fabric-lined mould; when cooled, the product is removed from the mould, trimmed and packed for shipment. In the compression moulding process, the various pieces of rubber are put into a mould where they are simultaneously formed and vulcanized by the application of heat and pressure. Since the manufacture of moulded footwear involves considerable capital expenditure, a high volume of production is required to minimize capital costs per unit of output.[6]

THE CANADIAN INDUSTRY

Profile of Canadian Producers

The Canadian rubber footwear industry currently consists of four producers: Vimod Rubber Company (Vimod), Genfoot Inc. (Genfoot), The Acton Rubber Company Ltd. (Acton) and Kaufman Footwear (Kaufman). These four companies account for all known Canadian production of the rubber footwear covered by this review. Kaufman and Acton have been producing rubber footwear for many decades, primarily using the traditional lay-up method of manufacturing. Vimod and Genfoot are comparative newcomers to the rubber footwear industry, having entered the market in the early 1980s with new technology based on injection moulding.

Table 2 describes the range of rubber footwear each company produces and indicates the method of production employed.

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5. Sandals solely of rubber are currently eligible for duty-free entry, i.e., they are excluded from the GPT Withdrawal Order. In its report dated October 30, 1985, the Tariff Board stated that sandals solely of rubber were not produced in Canada.
6. Tariff Board, Reference No. 161.1, October 30, 1985, pp. 20-21.

Table 2

Industry Profile

Firm	Subject Goods	Technology
1. Genfoot	- Red sole rubber boots - Men's, women's and children's rubber boots - Rubber insulated pac boot	- Injection moulding
2. Vimod	- Red sole rubber boots - Infants', children's, women's and men's rubber rain boots - Industrial rubber boots with steel toes and mid-soles - Oil and acid resistant boots - Hip and chest waders	- Injection moulding
3. Acton	- Red sole rubber boots - Safety boots - Overshoes and low rubbers - Waders	- Mostly lay-up - (Some injection moulding of red sole rubber boots)
4. Kaufman	- Safety boots - Red sole rubber boots - Overshoes and boots above the ankle - Waders and over the knee boots - Light toe rubbers	- Mostly lay-up - (Some injection moulding of toe rubbers and lug soles)

Genfoot is a family owned private company. It operates one plant in Montréal, Quebec, and another in Contrecoeur, Quebec. The injection moulding operation and head office is located in Montréal. This plant produces winter boot bottom components for its Contrecoeur facility as well as finished product such as the subject moulded rubber boots. Until 1979, Genfoot was one of the largest importers of rubber footwear in Canada. Currently imports are negligible. The company began producing rubber footwear in 1979-80. In recent years, Genfoot has substantially increased its exports, primarily to the United States.

Vimod, incorporated in November 1972, is one of four divisions of Chamberlain Phipps Canada Ltd., Stoney Creek, Ontario. Vimod began producing the subject rubber footwear in 1979 in Hamilton, Ontario. In addition to subject goods, Vimod produces components for a division of Phipps Canada located in Stoney Creek.

Acton, incorporated on February 6, 1937, was acquired by Albert Lambert International Inc. in 1979. Acton's manufacturing facility is located in Acton Vale, Quebec, where it has been producing waterproof rubber footwear for over 50 years. Acton's marketing and distribution functions are performed by Alfred Lambert International Inc.

Kaufman is the oldest manufacturer of rubber footwear in Canada. It began producing waterproof footwear in 1907, and has produced rubber footwear at its facility in Kitchener, Ontario, continuously since that time. Kaufman also exports rubber bottom components and felt sock liners, produced in Kitchener, to another wholly owned production facility located in Batavia, New York. Until the 1950s, the company manufactured mainly rubber footwear. Today, Kaufman produces a wide range of products, including rubber clothing, rubber bottom-leather top industrial and sport boots (Sorel), women's leather and nylon boots (Defrosters), leather hiking and work boots (Kingtreads), fabric slippers (Foamtreads) and casual footwear (Funtreads).

Rubber footwear is retailed mainly through department stores, speciality shops and mass merchandising outlets. Generally, manufacturer sales representatives sell directly to retailers and wholesalers. In some cases, particularly for industrial footwear, sales are made directly to end users. The Canadian producers go to great lengths to serve their clients. The breadth of the distribution of each of the producers geographically in Canada is extensive. Producers sell to large mass merchandisers of rubber footwear and to the many small independent retailers of rubber footwear scattered across the country. For many of the small retailers, domestic producers are their only source of supply because they are too small or too remotely situated to warrant the attention of importers or foreign exporters.

IMPORTERS/EXPORTERS

As Schedule I indicates, the subject goods are sourced in numerous countries around the world. Importers of the subject goods are diverse and numerous with Statistics Canada reporting well over 100 importers in 1990. They include large retailers and chain stores like Zellers Limited, K mart Canada Limited, Sears Canada Inc. and Canadian Tire Corporation; large independent distributors such as Omnitrade Limited, AZ Trading Co. Ltd. and Comet Strip Ent. (Canada) Ltd.; industrial suppliers such as Safety Supply Canada Ltd. and Industrial Safety Shoes; and smaller independent retailers such as Chaussures Yellow Ltée Division de Le Groupe Yellow and Aldo Shoes.

Notwithstanding the large number of importers, a high volume of imports is concentrated in the hands of a few major importers. More particularly, based on import data from Statistics Canada for 1990, 16 importers accounted for approximately 84 percent of the imports of rubber footwear from GPT countries and 10 importers accounted for approximately 75 percent of the imports from non-GPT countries.

No formal briefs were filed on behalf of exporters or importers. However, in their responses to the Tribunal's questionnaires, some importers stated that the GPT Withdrawal Order had no effect on them. Other importers reported that the GPT Withdrawal Order had caused them to reposition themselves in the marketplace by altering their market strategies or by changing their source of imports.

POSITION OF PARTIES

The Industry

The industry's counsel submitted that the Canadian rubber footwear industry is exemplary, excelling in a broad range of areas such as service, distribution, technology, innovation and investment. Collectively, it offers a broader range of footwear than is provided by imports, and the quality of Canadian products generally exceeds the quality of imports. However, if the GPT were reinstated, the Canadian rubber footwear industry would be in jeopardy.

Counsel noted that the withdrawal of the GPT on the subject rubber footwear has enabled it to develop economies of scale across its full range of rubber footwear, including non-subject goods. This has enhanced the industry's competitiveness in domestic markets and allowed it to substantially increase exports of footwear incorporating rubber components, especially to the United States.

Counsel argued that the potential for GPT countries to penetrate the Canadian market is very real. The subject countries, particularly China and Korea, have successfully penetrated the U.S. market, notwithstanding a tariff rate of 37.5 percent. If these countries can accomplish this in the United States, they clearly have the capability to export a large volume of rubber footwear to Canada at an MFN rate of 20 percent.

On behalf of the industry, counsel requested that rubber footwear be removed permanently from the list of goods eligible for GPT and be afforded the same MFN tariff treatment given to other footwear product lines. They maintained that there is no reason why rubber footwear should be on a different tariff footing from plastic footwear, which has never been afforded the GPT rate. Plastic footwear is highly substitutable for rubber footwear and it is produced and marketed in a similar fashion. Granting permanent MFN protection would put Canada on par with other countries such as the United States and the European Community (EC), which do not grant GPT rates on imports of rubber footwear.

The Shoe Manufacturers' Association of Canada

The Canadian rubber footwear industry's position is supported by the Shoe Manufacturers' Association of Canada (SMAC). The president of SMAC appeared as a witness before the Tribunal and stated that the rubber footwear industry in Canada is ready to meet fair competition. This is exemplified by the industry's growing confidence in its export competitiveness and its support for the FTA. Further, the industry has formally requested that the pace of tariff reduction under the FTA be accelerated. According to SMAC, there is strong, healthy competition in Canada under current market conditions. Consumers in Canada have a wide selection of products at reasonable prices. The president of SMAC noted that prices for rubber footwear have actually declined in real terms as prices have lagged well behind increases in the rate of inflation.

KEY ECONOMIC INDICATORS

The market for the subject goods has trended downward since the early 1980s, from an average of over 4 million pairs a year to an average of approximately 3 million pairs over the past three years. Total imports have fallen more quickly than domestic sales and, therefore, the domestic industry's market share has moved upward since 1980 from 36 percent to about 57 percent in 1990. Imports from GPT sources decreased from 35 percent in 1980 to approximately 12 percent in 1990. The value of the estimated apparent market for rubber footwear has ranged between $26 million and $33 million between 1988 and 1990.

Domestic production of the subject rubber footwear averaged around 1.9 million pairs from 1988 to 1990 and appears to have remained relatively stable over this period. In 1990, the predominant portion of domestic production was in the category of rubber footwear covering the ankle, such as red sole rubber boots and children's rain boots.

Current production levels have trended downward compared to the levels obtained during the 1980-87 period when production levels ranged between 2.5 and 3.8 million pairs.

Imports fell from approximately 3.7 million pairs in 1980 to 1.4 million pairs in 1987. This overall declining trend in total imports of subject goods since 1980 has continued during the 1988-90 period. Imports in 1990 have reached a 10-year low of approximately 1.2 million pairs.[7]

Over the past three years, there has been a change in the sourcing of imports. Among GPT countries, there has been a shift of imports to countries eligible for entry under BPT duty rates such as Malaysia. As a result, countries eligible for the BPT tariff rate have increased their share of imports from a minimal presence in 1988 to a 9-percent share of imports in 1990.

There has also been a shift in imports from GPT countries to imports of subject goods from non-GPT sources, particularly the United States and Taiwan. These two sources along with Czechoslovakia are the major non-GPT sources although imports from Czechoslovakia have fallen off sharply in recent quarters.

The trade in subject goods has also changed in terms of the composition of imports. Schedule III summarizes imports broken down by category of rubber footwear. The schedule shows that imports of rubber footwear covering the ankle have comprised the largest volume of subject imports over the period of review. However, since 1988, there has been an increase in imports of sandals with straps or thongs. On the whole, imports appear to be concentrated in the lower priced segment of the market.

On a consolidated basis, the industry has consistently operated at profitable levels since 1988, notwithstanding the decreases noted in total domestic shipments. In aggregate, the industry reported that the margins on sales of the subject rubber footwear are higher than on other industry sales of non-subject goods. These results have been achieved despite the fact that rubber footwear prices, on average, have been relatively stable over the past few years.

CONSIDERATION OF THE EVIDENCE

Under the mandate from the Minister relating to GPT matters, the Tribunal is empowered to receive and review petitions relating to the "future status" of cases where the GPT has been withdrawn and "to assess the effects which the reintroduction of GPT rates would have on domestic production and imports." The present case involves the future status of an existing safeguard measure withdrawing the GPT rate of duty on rubber footwear. Accordingly, the key question to be addressed is what is likely to happen if the GPT rate of duty is reinstated.

In considering this question, the Tribunal notes that, unlike most GPT safeguard cases, this case is not about a one-third reduction in the MFN rate of duty, generally amounting to a tariff reduction of a few percentage points. This case concerns the complete elimination of the MFN duty, involving a tariff reduction of 20 percentage points. The magnitude of this tariff decline makes this case unique. Expressed in dollar terms, the data and evidence available to the Tribunal indicate that the MFN tariff

7. Schedule II summarizes the statistical data for the years 1980 to 1990.

currently adds about $1.00 to $1.50 to the landed cost of GPT sourced imports of men's red sole rubber boots (which is the largest volume product covered by this review). This is about 10 percent of the average Canadian retail price of these boots that are at the lower priced end of the Canadian market for waterproof rubber footwear. The dollar amount of the tariff increases on higher priced boots (e.g. fireman's boots, lumberman's boots, etc.).

To appreciate the effects of GPT reinstatement, it is important to understand the changes that have taken place over the past 20 to 30 years. In the 1960s and 1970s, the industry was engaged in a struggle for survival against low-cost imports that led to the demise of numerous domestic firms. There are only two survivors of that era, Kaufman and Acton, who together with Vimod and Genfoot comprise the much reduced industry of today. In sharp contrast to the past, the evidence shows that, currently, the industry's vital economic indicators are positive.

More particularly, the industry's current market share of close to 60 percent represents about a 20-point increase from 1980. This growth in market share over the decade has allowed the industry to maintain reasonable production, capacity utilization and employment rates despite a decline of about 35 percent in apparent domestic demand for rubber footwear since the early 1980s. Moreover, the industry has been profitable, as a whole, over the past three years, reflecting its ability to achieve reasonable margins on sales. The evidence shows that these margins have been produced, for the most part, through cost reductions as prices have actually declined in real terms in recent years. These cost reductions are the result of substantial investments ($3.4 million since 1988), made by the industry in new production technology along with improvements in traditional production processes. These investments have enhanced the industry's competitiveness not only in the domestic market, but also in export markets.

Unlike past decades, the market of today is characterized by a good balance of competitive forces. More particularly, the cost reductions achieved by domestic producers over the past decade have enabled them, according to the evidence, to compete with low-cost imports on certain rubber footwear product lines at the present duty rate. On other product lines, the evidence shows that although GPT sourced imports can still be landed in Canada at a lower cost than domestic goods, the cost spread is narrow enough to allow domestic goods to compete and win sales on non-price factors such as quality, service and reliability. As past disparities were narrowed, the market share held by GPT sourced rubber footwear has fallen from 35 percent in 1980 to a decade low level of 12 percent in 1990, roughly corresponding to gains in market share by the domestic industry. The safeguard measure along with other factors such as the injurious dumping findings currently in place have affected the level of GPT imports. Appendix III contains a summary of these injury findings.

The Tribunal has little doubt that GPT sourced imports could quickly increase their market share through the effects of tariff elimination. In this connection, the Tribunal notes that GPT countries have enormous export capacity relative to the size of the Canadian market. This is clearly evidenced by their current volume of shipments to the United States (Exhibit No. A-2), which, at present, amount to almost twice the size of the entire Canadian market. In addition, industry witnesses testified that important GPT producers of rubber footwear, such as China, recently increased production capacity by the purchase of injection moulding equipment. This reinforces the claim made by the industry witness from Genfoot that the Canadian market could expect a flood of GPT sourced rubber footwear imports in a matter of six months or so, if the GPT were reinstated.

In more product specific terms, the evidence presented suggests that the effects of GPT reinstatement would be felt first in the low-priced segment of the rubber boot market. It is in this segment that GPT sourced imports are currently concentrated. This low-priced end of the boot market is extremely price sensitive as imported boots and domestic boots are fully substitutable. On the retail/distribution side, it is dominated by mass merchandisers who are constantly under competitive pressure to seek out the cheapest sources available. Under these circumstances, the cost relief afforded by GPT sourced imports through tariff elimination would almost certainly result in rapid and sizable price reductions. This would squeeze industry margins and, eventually, could force the abandonment of certain product lines.

Adverse effects would also be felt at the higher priced end of the rubber boot market, although more slowly and to a lesser extent, given that imports and domestic products are generally not as fully substitutable in the higher price ranges. However, the evidence shows that certain GPT countries are increasingly interested in this segment of the market. For example, industry witnesses reported that Korea recently received CSA (Canadian Standards Association) approval for certain leather footwear, indicating that they soon would seek and obtain CSA approval for rubber footwear. CSA approval would greatly increase the substitutability of Korean and domestic products in the higher priced market segment, making the effects of tariff reduction more acute.

Finally, the evidence shows that tariff elimination would have adverse effects not only on subject rubber footwear, but also on other non-subject products, such as rubber bottom boots with fabric uppers. The boot bottoms for these non-subject goods are manufactured on the same production lines as subject rubber footwear and they are affected by the same production economics. Thus, lower sales and smaller production runs on rubber footwear would raise unit costs for rubber bottoms and, hence, reduce the industry's competitiveness, both in domestic and export markets, across a whole range of products incorporating these rubber bottoms. Together, the products potentially affected by tariff elimination comprise the majority of industry sales.

Having regard to the foregoing, the Tribunal has no doubt that the elimination of the tariff would cause injury to the domestic industry and, conversely, that the continuation of the MFN tariff would provide significant relief.

The Tribunal notes that the industry has requested that rubber footwear be removed from the list of goods eligible for GPT rates of duty. In this connection, the industry points out that no other types of footwear, besides rubber footwear, are on the GPT eligibility list. Most significantly, plastic footwear, which competes directly with rubber footwear, is not on the GPT eligibility list.

The industry also notes that both the EC and the United States have never included rubber footwear on their respective lists of goods eligible for preferential tariff treatment. The industry argues that including rubber footwear on the Canadian eligibility list has created a level of jeopardy and uncertainty for the Canadian industry which producers in other countries do not have to face. The industry was also concerned about different Canada-United States tariff treatment of imports and the effect this would have on its ability to compete on an equal footing with U.S. producers under the FTA.

In the opinion of the Tribunal, the industry's concerns are valid. On the face of it, today, there seems no reason for singling out rubber footwear for different tariff treatment from other footwear, or for according it different treatment from Canada's major trading partners in respect to the system of preferential tariffs.

The Tribunal notes that the GPT rate of duty on rubber footwear was in effect for only about one year before its suspension in 1975. It has been continuously suspended since then, having been reviewed and extended on seven separate occasions prior to the present review. Indeed, it has been withdrawn for so long that importers and exporters appear to have little expectation of it ever being reinstated and have adjusted their market strategies accordingly. This may help to explain the low level of interest by exporters and importers in the present review and the statements made by several importers, in reply to the Tribunal's questionnaires, that the GPT withdrawal has no effect on their operations.

GPT imports are able to compete and maintain sizable market share in Canada at MFN duty rates. Indeed, the evidence shows that they are able to compete effectively in the United States at an MFN duty rate of 37.5 percent, almost double the Canadian MFN level. The reality is that GPT countries are low-cost sources of subject goods against which North American producers have difficulty competing if the natural cost advantages enjoyed by these countries are not offset, to some extent, by MFN tariffs. This reality has not changed for the past 15 years and is not likely to change in the near future.

CONCLUSIONS AND RECOMMENDATION

Having regard to the foregoing, the Tribunal concludes that the Canadian producers of rubber footwear face a threat of injury from the reinstatement of the GPT rate of duty with respect to imports of subject rubber footwear. Further, the Tribunal concludes that the continued application of the MFN tariff rate of 20 percent will provide significant relief to the Canadian producers.

The Tribunal, therefore, recommends that the GPT safeguard measure be extended until the scheduled expiry of the GPT program on June 30, 1994. In addition, every consideration should be given to the removal of rubber footwear from the list of goods eligible for GPT rates.

W. Roy Hines
Presiding Member

Arthur B. Trudeau
Member

Michèle Blouin
Member

Ottawa, Canada
October 31, 1991

APPENDICES

The General Preferential Program

The concept of a generalized system of preferences (GSP) was first introduced in the United Nations Conference on Trade and Development (UNCTAD) in 1964. Developing countries asserted that one of the major impediments to accelerated economic growth and development was their inability to compete on an equal basis with developed countries in the international trading system. Through tariff preferences in developed country markets, the least developed countries claimed that they could increase exports and foreign exchange earnings needed to diversify their economies and reduce dependence on foreign aid.

As initially conceived, GSPs were to be: (1) temporary, unilateral grants of preferences by developed countries to developing countries; (2) designed to extend benefits to sectors of developing countries that were not competitive internationally; and (3) designed to include safeguard mechanisms to protect domestic industries sensitive to import competition from articles receiving preferential tariff treatment.

In order to implement their GSPs, the developed countries obtained a waiver from the MFN clause of Article I of the GATT, which provides that trade must be conducted among countries on a nondiscriminatory basis. A 10-year MFN waiver was granted in June 1971 through the "enabling clause" of the Texts Concerning a Framework for the Conduct of World Trade concluded in the Tokyo Round of GATT Multilateral Trade Negotiations. The enabling clause, which has no expiration date, provides the legal basis for "special and differential" treatment for developing countries.

On July 1, 1974, Canada introduced a system of tariff preferences designated as the GPT. Thereby, industrial goods, then originating in 103 less developed countries and territories,[1] generally became admissible into Canada at the lower of the BPT rate or two-thirds of the MFN rate.[2] Specific duty preferences were also established in relation to selected agricultural products. However, many agricultural commodities, a few industrial raw materials, most textile and clothing products, all leather footwear and certain electron tubes were excluded from the coverage of the GPT, primarily on account of the perceived sensitivity of Canadian production in these sectors to import competition.

The GPT has not been made a permanent part of the Canadian tariff structure. Initially, it was put in place for a 10-year period, which has since been extended. The GPT is now scheduled to expire on June 30, 1994, "or on such earlier day as may be fixed by proclamation."[3] Changes to the GPT, notably with respect to the list of beneficiary countries and the range of admissible products, may be effected by Order in Council.

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1. The list of countries has been modified subsequently and some 163 countries and territories are now entitled to GPT benefits. Those whose goods were eligible to enter under the GPT as of January 1, 1990, are listed in Appendix II.
2. However, no such formula is specified in the latest version of the *Customs Tariff*, effective January 1, 1988.
3. For legislative provisions respecting the GPT, see *Customs Tariff*, sections 35 to 45.

Countries Entitled to Enter Goods Under the General Preferential Tariff as of January 1, 1990

Afghanistan +
Algeria
Angola
Anguilla *
Antigua and Barbuda *
Antilles, Netherlands
Argentina
Ascension *
Bahamas *
Bahrain
Bangladesh * +
Barbados *
Belize *
Benin +
Bermuda *
Bhutan +
Bolivia
Botswana * +
Brazil
British Indian Ocean Territory *
Brunei Darussalam *
Bulgaria
Burkina Faso +
Burma +
Burundi +
Cameroon
Cape Verde +
Caroline Islands
Cayman Islands *
Central African Republic +
Chad +
Chile
China, People's Republic of
Christmas Island *
Cocos (Keeling) Islands *
Colombia
Comoros +
Congo
Cook Islands *
Costa Rica
Côte d'Ivoire
Cuba
Cyprus *
Djibouti +
Dominica *
Dominican Republic
Ecuador
Egypt
El Salvador
Emirates, United Arab
Equatorial Guinea +
Ethiopia +
Falkland Islands *
Fiji *
Gabon
Gambia * +
Ghana *
Gibraltar *
Grenada *
Guam
Guatemala
Guinea +
Guinea-Bissau +
Guyana *
Haiti +
Honduras
Hong Kong
Hungary
India *
Indonesia
Iran, Islamic Republic of
Iraq
Israel
Jamaica *
Jordan
Kampuchea, Democratic
Kenya *
Kiribati * +
Korea, Republic of (South)
Kuwait
Lao People's Democratic Republic +
Lebanon
Lesotho * +
Liberia
Macao
Madagascar
Malawi * +
Malaysia *
Maldives * +
Mali +
Malta *
Mariana Islands
Marshall Islands
Mauritania +

Mauritius *
Mexico
Montserrat *
Morocco
Mozambique
Nauru *
Nepal +
New Caledonia and Dependencies
Nicaragua
Niger +
Nigeria *
Niue
Norfolk Island *
North Africa, Spanish
Pakistan *
Panama
Papua New Guinea *
Paraguay
Peru
Philippines
Poland
Pitcairn *
Polynesia, French
Qatar
Romania
Rwanda +
St. Christopher (St. Kitts) and Nevis *
St. Helena and Dependencies *
St. Lucia *
St. Vincent and the Grenadines *
Samoa, American
Samoa, Western * +
Sao Tome and Principe +
Senegal
Seychelles *
Sierra Leone * +
Singapore *
Solomon Islands *
Somalia +
Southern and Antarctic Territories, French
Sri Lanka *
Sudan +
Suriname
Swaziland *
Syrian Arab Republic
Tanzania, United Republic of * +
Thailand
Togo +
Tokelau Islands *
Tonga *
Trinidad and Tobago *
Tristan Da Cunha *
Tunisia
Turkey
Turks and Caicos Islands *
Tuvalu * +
Uganda * +
Uruguay
Vanuatu * +
Venezuela
Viet Nam
Virgin Islands, British *
Virgin Islands, U.S.A.
Yemen Arab Republic +
Yemen, People's Democratic Republic of +
Yugoslavia
Zaïre
Zambia *
Zimbabwe *

* Denotes GPT beneficiary countries and territories whose goods are also eligible for entry under the BPT.

\+ Denotes GPT beneficiary countries and territories designated as least developed developing countries whose goods are eligible for duty-free entry.

Source: *Customs Tariff*, Schedule III, January 1, 1990.

Related Injury Findings

On May 25, 1979, the Anti-dumping Tribunal found that the dumping of waterproof rubber footwear constructed wholly or in part of rubber, worn over the foot or shoe, with or without liners, linings, fasteners or safety features, originating in or exported from Czechoslovakia, Poland, the Republic of Korea and Taiwan (excluding snowmobile boots; rubber-bottom leather-top boots and safety footwear) had caused, was causing and was likely to cause material injury to domestic production (Inquiry No. ADT-4-79).

On May 22, 1981, the Deputy Minister of National Revenue for Customs and Excise initiated a second investigation respecting waterproof rubber footwear constructed wholly or in part of rubber with or without liners, linings, fasteners or safety features but excluding snowmobile boots; and safety footwear originating in or exported from Hong Kong, Malaysia, Yugoslavia and the People's Republic of China. On April 23, 1982, the Anti-dumping Tribunal found that the dumping of these goods from the named countries had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods (Inquiry No. ADT-2-82).

Both findings were continued for a period of up to five years through provisions which accompanied the introduction of the *Special Import Measures Act*, on December 1, 1984. In 1987, the Canadian Import Tribunal decided to review the above two findings. As a result of the review, the findings were continued without amendment. In the review, it was noted that since 1982, the industry as a whole had improved its position in the market. Industry production volumes grew by over 30 percent between 1983 and 1986. However, the individual track record of the four producers, who comprised the domestic industry then (and still do so today), was uneven. The Canadian Import Tribunal noted that those that had made gains had made the transition to more competitive production methods and technology, in particular, injection moulding. However, as of 1986, approximately one-half of domestic rubber footwear was still manufactured using the traditional labour intensive, lay-up process and, in the opinion of the Tribunal, this left the industry vulnerable to dumped import competition.

SCHEDULES

Apparent Imports of Rubber Footwear - Pairs

	1988	%	1989	%	1990	%	January 1 to March 31 1990	%	1991	%
GPT Countries:										
*GPT(a):										
Brazil	8,009	1	1,591	0	1,409	0	0	0	11,573	4
•China	138,818	11	226,500	18	173,365	15	96,456	27	15,335	5
•Hong Kong	44,103	4	54,206	4	8,914	1	1,845	1	2,520	1
•South Korea	240,313	20	90,027	7	52,372	4	7,585	2	6,360	2
Other GPT	4,800	0	23,911	2	232	0	232	0	0	0
Subtotal GPT(a)	436,043	36	396,235	31	236,292	20	106,100	30	35,788	12
*GPT(b):										
•Malaysia	2,380	0	37,824	3	60,323	5	11,713	3	11,223	4
Sri Lanka	4,000	0	17,756	1	18,650	2	4,200	1	6,000	2
Zimbabwe	0	0	22,617	2	25,680	2	0	0	0	0
Subtotal GPT(b)	6,380	0	78,197	6	104,653	9	15,931	4	17,223	6
Total GPT(a) and GPT(b)	442,423	36	474,432	37	340,945	29	122,031	34	53,011	18
Non-GPT Countries:										
•Czechoslovakia	311,510	25	353,576	28	278,514	24	137,416	38	35,885	12
Finland	39,794	3	48,058	4	18,878	2	2,782	1	336	0
Italy	28,446	2	9,465	1	8,480	1	1,800	1	5,235	2
Portugal	487	0	341	0	641	0	0	0	0	0
•Taiwan	78,973	6	185,365	15	189,417	16	15,999	4	142,248	48
United Kingdom	46,385	4	15,279	1	12,771	1	4,425	1	0	0
United States	254,603	21	173,872	14	311,663	27	68,807	19	57,655	19
Other Non-GPT	19,886	2	14,790	1	7,486	1	4,528	1	1,442	0
Total Non-GPT	780,084	64	800,746	63	827,850	71	235,177	66	242,801	82
Total Imports	1,222,507	100	1,275,178	100	1,168,795	100	357,208	100	295,812	100
% Increase (Decrease)			4		(8)				(20)	

• Countries that are also subject to injury findings regarding rubber footwear.

* GPT(a) countries are countries who are eligible for preferential tariffs only under the GPT. GPT(b) countries are eligible for free entry under both the GPT and the BPT. As such, withdrawal of the GPT from these latter countries does not affect them because their goods can still enter duty free under the BPT.

Source: Statistics Canada H.S. 6401.10.00.00, 6401.10.10.00, 6401.92.90.11, 12, 13, 81, 82, 83, 6401.92.91.10, 20, 90, 6401.99.00.10, 20, 30, 6401.99.10.00, 6402.20.10.10, 20, 30, 6401.91.00.00, 6401.91.10.00. Adjusted to exclude plastic footwear and sandals solely of rubber.

Apparent Canadian Market 1980-90

(000 Pairs)

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Domestic Shipments	2,058	1,899	1,757	2,245	2,466	2,661	2,646	2,581	1,912	1,709	1,570
Imports:											
GPT	2,041	1,372	1,194	1,398	1,130	851	525	603	442	474	341
Non-GPT	1,686	1,033	906	948	1,135	1,001	836	795	780	801	828
Total Imports	3,727	2,405	2,100	2,346	2,265	1,852	1,361	1,398	1,223	1,275	1,169
Total Market	5,785	4,304	3,857	4,591	4,731	4,513	4,007	3,979	3,134	2,984	2,739
% Increase (Decrease)		(26)	(10)	19	3	(5)	(11)	(1)	(21)	(5)	(8)
% Domestic Share	36	44	46	49	52	59	66	65	61	57	57

Source: For the years 1980-87: Tariff Board's report, Reference No. 161.2, dated October 12, 1988. The Tariff Board data included rubber bottom-leather top boots and snowmobile boots. As these products are excluded from the present review, the Tariff Board figures have been adjusted accordingly to allow previous period figures to be compared with current period data.

For the years 1988-90: Replies to the manufacturers' questionnaires.

Apparent Imports of Rubber Footwear By Category - 000 Pairs

	1988	%	1989	%	1990	%	January 1 to March 31 1990	%	1991	%
Protective Toe:										
GPT(a)	55	4	12	1	2	0	2	1	0	0
GPT(b)	2	0	7	1	18	2	6	2	6	2
Non-GPT	119	10	94	7	118	10	36	10	40	14
Total	176	14	113	9	138	12	44	12	46	16
Covering the Knee:										
GPT(a)	25	2	2	0	1	0	1	0	0	0
GPT(b)	0	0	2	0	5	0	2	1	0	0
Non-GPT	18	1	12	1	33	3	5	1	3	1
Total	43	4	16	1	39	3	8	2	3	1
Covering the Ankle:										
GPT(a)	170	14	79	6	50	4	7	2	18	6
GPT(b)	4	0	45	4	56	5	8	2	11	4
Non-GPT	472	39	404	32	275	24	132	37	19	6
Total	646	53	528	41	381	33	147	41	48	16
Other:										
GPT(a)	45	4	39	3	10	1	1	0	1	0
GPT(b)	0	0	3	0	1	0	0	0	0	0
Non-GPT	152	12	125	10	230	20	55	15	31	11
Total	197	16	167	13	241	21	56	16	32	11
Straps/Thongs:										
GPT(a)	142	12	264	21	173	15	96	27	17	6
GPT(b)	0	0	23	2	26	2	0	0	0	0
Non-GPT	20	2	165	13	171	15	7	2	149	51
Total	162	13	452	35	370	32	103	29	166	56

GPT(a) = GPT countries
GPT(b) = GPT beneficiary countries whose goods are also eligible for free entry under BPT. Therefore, these imports are not affected by the withdrawal order.