

THE
CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



LE TRIBUNAL
CANADIEN
DU COMMERCE
EXTERIEUR

SAFEGUARD REVIEW

SE-90-002

HOT-FORGED SCISSORS AND SHEARS

GPT WITHDRAWAL REVIEW

Tribunal Members: Robert J. Bertrand, Q.C., Presiding Member
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March 4, 1991

The Honourable Michael H. Wilson, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Wilson:

In a letter dated February 16, 1989, you instructed the Canadian International Trade 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. You also requested that the Tribunal review cases where the GPT had been withdrawn and report its findings to you.

In 1988, the Governor in Council amended the GPT Order to withdraw the benefit of the GPT on all imports of hot-forged scissors and shears, 150 mm or more in length, from Brazil, for a period of three years. Unless continued by the Governor in Council, the amended GPT Order will expire on June 30, 1991.

Pursuant to section 7 of the *Canadian International Trade Tribunal Act*, I appointed Robert J. Bertrand, Q.C., Presiding Member, Sidney A. Fraleigh, Member, and Charles A. Gracey, Member, to review the safeguard action applied to imports of hot-forged scissors and shears from Brazil. On behalf of the Tribunal, I am pleased to submit its finding for your consideration.

In preparing the finding, the Tribunal members sought submissions from domestic producers, importers and exporters of scissors and shears. None were received from producers, Canadian production having ceased at the end of 1988.

In the circumstances, the Tribunal members conclude that the continuation of the withdrawal of the GPT cannot benefit the Canadian industry. They find that, in the absence of Canadian production, the safeguard action should be terminated, effective immediately.

Yours sincerely,

A handwritten signature in black ink that reads 'John C. Coleman'. The signature is written in a cursive style with a long horizontal stroke at the end.

John C. Coleman

INTRODUCTION

On September 14, 1990, the Canadian International Trade Tribunal (the Tribunal), in Notice of Expiry No. SE-90-002, gave notice that the Order in Council P.C. 1988-1116, which withdrew the benefit of the General Preferential Tariff¹ (GPT) with respect to imports of hot-forged scissors and shears, 150 mm or more in length, originating in Brazil, for a period of three years beginning on July 1, 1988, was scheduled to expire on June 30, 1991. The Tribunal indicated that it would appreciate receiving from interested parties any facts, opinions and arguments regarding the temporary measure. The notice also indicated that unless the Tribunal received a petition for the continuance of the temporary measure and, subsequently, issued a finding to the effect that the Canadian industry would face an imminent threat of future injury if the safeguard action were permitted to lapse, in which case the Minister of Finance would have to extend the order, the measure would expire as scheduled. The Notice of Expiry was published in Part I of the September 22, 1990, issue of the Canada Gazette and sent to 19 interested parties.

Pursuant to section 19 of the *Canadian International Trade Tribunal Act* and a letter dated February 16, 1989, from the Minister of Finance, the Tribunal is empowered to receive and review petitions that may be made by interested parties relating to the future status of the temporary safeguard measure and to report to the Government.

BACKGROUND

Summary of the Previous Inquiry

On July 25, 1985, a request for safeguard action against the duty-free importation of Brazilian scissors and shears entered under the General Preferential Tariff was submitted to the Tariff Board (the Board) by International Scissor Limited (ISL) of Perth, Ontario, the sole Canadian producer of scissors and shears. The petitioner claimed that J.A. Henckels Zwillingwerk Canada Ltd., the importer of the Brazilian goods, was "taking advantage of the preferential tariff by moving ... production from Germany to a country which can export into Canada duty-free."

On August 7, 1985, on the basis of a preliminary review of the information that was available, the Board concluded that, *prima facie*, there was sufficient evidence to suggest that difficulties encountered by ISL may have been caused by imports of competing goods under the GPT, and arrangements were made for a full public inquiry. A public hearing was held in Ottawa, Ontario, on October 30, 1985, and the inquiry was identified as Safeguard Petition No. 13 or SP13.

The evidence placed before the Board at the public hearing and the analysis by the Board's staff indicated that the pricing action by J.A. Henckels Zwillingwerk Canada Ltd. had a depressing effect on the prices for comparable, competing ISL scissors and shears. ISL's returns from domestic sales were adversely affected, and output and sales by the petitioner declined in 1985 while imports and sales by the importer of scissors and shears from Brazil rose substantially. Efforts by ISL to reach a break-even point were unsuccessful and the Canadian company continued "to operate at a loss." Capacity utilization remained low. The Board, therefore, concluded that ISL, the petitioner, had actually suffered injury and was faced by a threat of continuing injury

1. See attached Appendix for a short description of the GPT Program.

"from imports of scissors and shears with blades 6 inches and over in length when imported from Brazil under the lower rate of duty of the General Preferential Tariff."

Furthermore, the Board was of the opinion that the withdrawal of free entry under the GPT for scissors and shears with blades 6 in. and over in length,² when imported from Brazil, and the imposition on such imports of the Most-Favoured-Nation (MFN) rate of 17.8 percent (reduced to 17.5 percent in 1987) would improve the competitiveness of the Canadian producer in the domestic market. The Board was satisfied that the petitioner, under its new management, had demonstrated sufficient experience in market development and marketing to exploit this improvement and, thus, was likely to obtain significant benefit over the next two or three years in the form of greater sales and output, and financial viability as a result of the withdrawal of the GPT benefit.

Accordingly, on March 20, 1986, the Board recommended that the General Preferential Tariff on scissors and shears of 6 in. or over in length from Brazil, imported under tariff item 42906-1, be withdrawn, effective immediately, for a period of three years.

Government Decision

On June 9, 1988, the Governor in Council, on the recommendation of the Minister of Finance, issued Order in Council P.C. 1988-1116, temporarily withdrawing the benefit of the GPT on hot-forged scissors and shears, 150 mm or more in length, which originate in Brazil. The period of withdrawal of the GPT benefit was stipulated as beginning on July 1, 1988, and ending on June 30, 1991.

The Product

The subject goods are described in the Order in Council as hot-forged scissors and shears, 150 mm or more in length. In technical parlance "scissors" are distinguished from "shears" by virtue of having fingerholes of the same size, whereas "shears" have fingerholes of different sizes, allowing the user to obtain additional leverage by putting more than one finger in the bottom hole. Scissors with blades of less than 150 mm are not used to cut heavy materials and are not generally used in industrial applications, where superior cutting ability is a distinct advantage. Depending upon the manufacturing process used, scissors and shears can also be identified as "hot-forged," "cold-formed," or "cast."

The Industry

ISL was described by the Board as the "sole Canadian producer of scissors and shears" in its 1986 report, SP13. ISL ceased its operations in December 1988,³ some six months after the temporary withdrawal of the GPT was introduced. It would appear that the introduction of the requested safeguard action had not been of sufficient assistance to the company.

2. Equivalent to 150 mm or more in length.

3. The former manager of ISL, Mr. Craig T. Wormald, of Perth, Ontario, in a telephone conversation on August 29, 1990, indicated to the research staff of the Tribunal that ISL ceased operations in December 1988.

The volume of shipments of scissors and shears by the domestic industry reached a high point of almost one quarter of a million pairs in 1979, subsequently slumping to a little over 100,000 pairs in 1982. Thereafter, a partial recovery took place, although far fewer scissors and shears were shipped by ISL in the mid-1980s than in 1979. The company indicated an output of 120,000 pairs of scissors and shears in 1985, some 85-90 percent being 150 mm or over in length. There has been no production of the subject goods in Canada since December 1988 and it has not been possible to obtain production and financial data respecting ISL for the period from 1985 until its demise in 1988.

POSITION OF PARTIES

The Tribunal indicated, in its notice of expiry, that it would appreciate receiving from interested parties any facts, opinions and arguments regarding the temporary measure. The notice was sent to the parties involved in the parties Board's inquiry (SP13), which gave rise to the noted Order in Council. These included four of the five companies that made submissions in the original Board inquiry, that is, the Embassy of Brazil, two importers and the representative of the foreign exporter. A copy of the notice was not sent to the fifth party, the Canadian producer, ISL, which made the petition to the Board for safeguard action because it ceased operations in December 1988. In addition, a copy of the notice was sent to seven producers of scissors (not necessarily producers of the subject scissors) listed in Fraser's Canadian Trade Directory (1989) one producer listed in the Canadian Trade Index (1989) and four other parties whose name appeared on the distribution list of the Board's report, SP13, that is, three importers and one customs broker. In total, the notice was sent to 19 interested parties and was published in Part I of the September 22, 1990, issue of the Canada Gazette.

Industry's Position

Given the demise of ISL, heretofore the sole Canadian producer of the subject goods, and the lack of response from other listed Canadian producers of scissors as a result of the Tribunal's widely publicized notice of expiry, it would appear that there is no longer any producer of the subject goods. At the least, there is no expression of support by any Canadian producer for the continued withdrawal of the GPT benefit respecting the subject scissors.

Importer's/Exporter's Positions

Three submissions were received in response to the Tribunal's notice of expiry, one favoring the continuation of the temporary withdrawal order and two requesting its expiry. Lamplough Culley Canada Ltd., of Montréal, re-stated its original objection to the granting of the GPT benefit to Brazil on the grounds that Brazil has "the most modern and technologically advanced 'scissor manufacturing facilities' in the world." It also expressed the view that the original extension of the GPT rate to Brazil had contributed to the bankruptcy of ISL. Subsequently, it was learned that Lamplough Culley Canada Ltd. imports competing scissors from Italy and apparently does not wish Brazil to obtain a 17.5 percent duty-rate advantage over such imports.

A submission was also received from Grey, Clark, Shih and Associates, Limited, of Ottawa, on behalf of J. A. Henckels Zwillingwerk Canada Ltd. and the Ministry of

Economy, Planning and Finance of the Government of the Federative Republic of Brazil requesting that the GPT benefit be reinstated without delay. In addition, the Embassy of Brazil, of Ottawa, made a separate request. They both invoked similar reasons, mainly that ISL had ceased operations and as there was no production of the subject goods in Canada there was, therefore, no basis for protection. In addition, the Embassy of Brazil indicated that the temporary withdrawal order placed Brazilian exports at a competitive disadvantage vis-à-vis other GPT suppliers to Canada and also penalized the Canadian consumer and failed to protect the Canadian industry, since no Canadian producer existed.

Brazil's share of total imports, in 1989, the last complete year for which statistics are reported by Statistics Canada, was 6 percent, by volume, and 11 percent, by value, of scissors and shears exceeding 150 mm in length. Imports are reported under statistical class 8213.00.10.20, which covers scissors and shears exceeding 150 mm in length, and which is not limited to the subject hot-forged scissors. Corresponding values for all other GPT countries are 40 and 27 percent respectively, with South Korea accounting for most of these shares.

FINDING

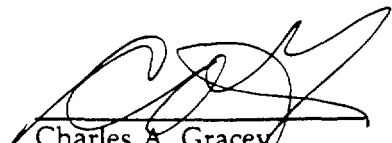
In light of the lack of representations for the continuation of the temporary GPT withdrawal by any Canadian producer of the subject goods and the fact that the subject goods are, apparently, no longer produced in Canada, the Tribunal finds that there is no justification for the continuation of the current Order in Council, which should be terminated effective immediately.



Robert J. Bertrand, Q.C.
Presiding Member



Sidney A. Fraleigh
Member



Charles A. Gracey
Member

Ottawa, Canada
March 4, 1991

APPENDIX I

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 to expand their exports to developed country markets. Under the system, industrial goods originating in developing countries and territories could enter Canada at preferential tariff rates established by legislation in Schedules I and II of the *Customs Tariff*. Specifically excluded from GPT coverage were certain products, such as leather footwear and most textile products. Currently there are some 161 countries and territories entitled to the GPT benefit.

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) Anti-Dumping Code and the Code on Subsidies and Countervailing Duties, and to consider whether the withdrawal of the GPT benefit on the product or products concerned would provide significant relief to the Canadian industry.

In those instances where the GPT benefit had been withdrawn, the Minister directed the Tribunal to collect information related to any relief provided during the period that the withdrawal and to receive and review petitions from interested parties concerning the future of the measure. The Tribunal must report its finding to the Minister on these matters no later than 60 days before the measure's scheduled expiry.