

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
DOUBLETEX REGARDING
CERTAIN WOVEN FABRICS OF
COTTON/POLYESTER AND POLYESTER/COTTON**

JULY 3, 2002

DOUBLETEX

REQUEST NO. TR-2000-006

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INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference¹ from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.² The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

On March 9, 2001, pursuant to the Minister's reference, the Tribunal received a request from Doubletex, of Montréal, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations, from all countries, of certain high-twist woven fabrics of cotton/polyester and polyester/cotton, for use by textile converters only to produce dyed and finished fabrics. Doubletex also sought immediate tariff relief.

On June 19, 2001, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation³ into the matter. As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the fabrics covered by the request for tariff relief. A request for information was also sent to potential users and importers of those fabrics. A letter was sent to the Canada Customs and Revenue Agency (CCRA), requesting a complete description of the physical characteristics of the samples submitted by Doubletex, an opinion on whether the tariff relief is administrable and suggested wording should tariff relief be recommended. Prior to filing its request, Doubletex obtained a National Customs Ruling covering the fabrics. Letters were also sent to a number of other government departments requesting information and advice.

On August 17, 2001, the Tribunal received a request from Doubletex to narrow the scope of the end use of the dyed and finished fabrics to the apparel and footwear industries. As a result, the Tribunal issued an amendment to the notice of commencement of investigation on September 10, 2001.⁴

On October 9, 2001, a staff investigation report, summarizing the information received from the CCRA and other government departments, Doubletex, questionnaire respondents and other interested parties was provided to those that had become parties to the proceedings by filing notices of appearance in the investigation. Following distribution of the staff investigation report, Doubletex filed a submission with the Tribunal.

On February 7, 2002, the Tribunal received a request from Doubletex to amend, for the second time, the description of the fabrics covered by its request for tariff relief. Doubletex indicated that using a "metric twist factor of 45 or more" in lieu of a "twist of 1,000 turns or more per metre" in the product description would clearly identify and isolate all high-twist blended fabrics regardless of the weight of the yarns in such fabrics. On February 11, 2002, the Tribunal asked the CCRA to comment on the matter. On the basis of the information contained in the CCRA's response of March 28, 2002, the Tribunal issued a second amendment to the notice of commencement of investigation on April 16, 2002.⁵ Parties to the

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1. The terms of reference were last modified in 1999.
 2. R.S.C. 1985 (4th Supp.), c. 47.
 3. C. Gaz. 2001.I.2376.
 4. C. Gaz. 2001.I.3626.
 5. C. Gaz. 2002.I.1171.

investigation were given an opportunity to provide new or additional information to the Tribunal. The Tribunal received no additional submissions.

The fabrics under investigation were described in the second amendment to the notice of commencement of investigation as “woven fabrics of cotton mixed solely with polyester staple fibres, unbleached or bleached, ring-spun, having a metric twist factor ($[\text{turns per metre}] \times [\text{square root of tex}] \times 0.01$) of 45 or more in the warp or the weft, of heading Nos. 52.08, 52.09, 52.10 [and] 52.11, for use by textile converters only to produce dyed and finished fabrics for the apparel and footwear industries; and woven fabrics of polyester staple fibres mixed solely with cotton, unbleached or bleached, ring-spun, having a metric twist factor ($[\text{turns per metre}] \times [\text{square root of tex}] \times 0.01$) of 45 or more in the warp or the weft, of heading Nos. 55.12, 55.13 [and] 55.14, for use by textile converters only to produce dyed and finished fabrics for the apparel and footwear industries (the subject fabrics).”

Given that there was sufficient information on the record, the Tribunal decided that a public hearing was not required for this investigation.

PRODUCT INFORMATION

The subject fabrics are greige fabrics, which are converted (i.e. dyed and finished) at Doubletex’s plants located in Montréal, Quebec, and Winnipeg, Manitoba. These finished fabrics are then sold to the apparel and footwear industries.

As of January 1, 2002, the subject fabrics, classified for customs purposes in heading Nos. 52.08, 52.09, 52.10 and 52.11 of the schedule to the *Customs Tariff*,⁶ are dutiable at 8 percent, 10 percent, 13 percent or 16 percent *ad valorem* under the MFN tariff; are dutiable, in some cases, at 10 percent or 11.5 percent *ad valorem* under the Australia Tariff and the New Zealand Tariff; and are duty free under the United States Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff. Fabrics classified in heading Nos. 55.12, 55.13 and 55.14 are dutiable at 16 percent *ad valorem* under the MFN tariff and are duty free under the United States Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

Under the World Trade Organization tariff reduction schedule, the MFN tariff rates applicable to imports of the subject fabrics in heading Nos. 52.08, 52.09, 52.10 and 52.11 will, in most cases, remain unchanged or be reduced in stages from 13 percent to 12 percent *ad valorem* and from 16 to 14 percent *ad valorem* on and after January 1, 2004. Fabrics classified in heading Nos. 55.12, 55.13 and 55.14 will be reduced in stages from 16 to 14 percent *ad valorem* on and after January 1, 2004.

REPRESENTATIONS

Doubletex

In its request for tariff relief, Doubletex claimed that there is no “consistent” source of greige fabric in Canada. In this regard, it indicated that twill and plain woven cotton/polyester greige fabrics, made from high-twist (in excess of 1,000 turns per metre), ring-spun yarns, are not available in Canada.

6. S.C. 1997, c. 36.

Doubletex stated that, on numerous occasions, it had discussions regarding the subject fabrics with DIFCO Performance Fabrics Inc. (DIFCO) and Consoltex Inc. (Consoltex) and that both companies are not in a position to respond to its needs. According to Doubletex, Consoltex does not sell greige fabrics to textile converters in Canada, nor does it weave fabrics from high-twist, ring-spun yarns. Furthermore, Doubletex alleged that it has spent years trying to work with DIFCO on greige fabrics with high-twist, ring-spun yarns, but that DIFCO is unable to produce fabrics that are adequate to its needs. Doubletex indicated that, some years ago, DIFCO acknowledged that it could not supply Doubletex's needs for cotton fabrics with high-twist yarns.

Doubletex stated that tariff relief on the subject fabrics would help increase its business. It also stated that, due to U.S. quota rules, it is not in a position to easily sell its dyed and finished fabrics in the U.S. market;⁷ therefore, Canada is Doubletex's principal market, and Doubletex requires reduced costs in order to serve this market on a competitive basis. On this point, Doubletex indicated that U.S. textile converters have access to a large domestic supply of greige fabrics and that it requires duty-free access to high-twist greige fabrics in order to compete in Canada with U.S. textile manufacturers.

Textile Industry

Baker Textile Inc. (Baker)

Baker, of Montréal, Quebec, indicated that it does not import the subject fabrics at this time. However, should it import the subject fabrics for further processing in the future, Baker expressed concern that it would be excluded from any tariff relief granted because such relief would be limited to textile converters.

C.S. Brooks Canada Inc. (Brooks)

Brooks, of Magog, Quebec, is a vertically integrated manufacturer of textile fabrics and home furnishings, such as comforters, bed sheets, pillow cases, duvet covers, cushions, draperies and valances. It produces greige fabrics at its manufacturing facility in Sherbrooke, Quebec. These fabrics are bleached, dyed or printed and cut at its production facility in Magog.

Brooks opposed Doubletex's request for tariff relief on the grounds that the removal of the customs duty on the subject fabrics would compromise its production of greige fabrics and finished fabrics, jeopardize jobs and have a negative impact on investment programs relating to its production facilities.

Brooks claimed that, in terms of specific applications, such as home furnishings or bedding products, it produces fabrics that are identical to or substitutable for the subject fabrics. In this regard, it provided one sample of a 100 percent cotton fabric, four samples of 50/50 cotton/polyester blends and two samples of 82/18 cotton/polyester blends. Brooks submitted that most of the fibre characteristics, the yarn characteristics, such as the size and weight, and the construction, width and weight of the subject fabrics, are the same as or similar to the physical characteristics of the fabrics that it produces.

Brooks indicated that, in the home furnishings business, contrary to the apparel business, consumers generally perceive many different fabrics as substitutable. In this connection, it stated that the subject fabrics

7. A Canadian exporter needs quota to export and sell, in the U.S. market, a converted fabric using greige fabric sourced in a country subject to U.S. quota.

classified in heading Nos. 52.10⁸ and 55.13⁹ can be considered as being perfectly substitutable for its fabrics, since they are all cotton rich. Brooks also indicated that consumers, when faced with relatively small differences in the characteristics of home furnishing products, would perceive the fabrics as being virtually identical.

Brooks indicated that it also produces fabrics such as those classified in heading Nos. 52.11¹⁰ and 55.14.¹¹ In addition, it stated that the imported fabrics of heading No. 52.08,¹² for use in the manufacture of home furnishings and bedding products, will compete with new high-end products that it has recently developed for the Canadian and U.S. markets.

Brooks submitted that the subject fabrics are now available duty free within NAFTA countries and that there is presently an excess production capacity for these fabrics in the United States and in North America. Moreover, it indicated that the subject fabrics from non-NAFTA countries are already price-competitive with its fabrics with the existing duties in place. Brooks also indicated that the current MFN duty of 16 percent *ad valorem* continues to decrease.

Following the issuance of the first amendment to the notice of commencement of investigation, Brooks, by letter dated September 24, 2001, suggested a minor amendment to the product definition¹³ in order to clearly exclude bedding products from the scope of the investigation. It also reserved its position to file additional comments once the staff investigation report had been distributed. On October 26, 2001, Brooks advised the Tribunal that it did not wish to file additional information.

Consoltex

Consoltex, of Ville St. Laurent, Quebec, employs over 500 people at five different plants located in Quebec and Ontario. It produces woven man-made fabrics, including cotton/polyester and polyester/cotton fabrics, for the apparel and home furnishings industries.

Initially, Consoltex opposed the request for tariff relief, submitting that it produces and sells identical or substitutable fabrics with high-twist yarns, e.g. polyester/cotton fabrics with high-twist polyester yarn. However, on September 27, 2001, it advised the Tribunal that it was withdrawing its opposition to Doublet's request for tariff relief and asked that the Tribunal ignore the previous information and comments sent to the Tribunal on July 25, 2001. Consoltex indicated that its change of position was caused by the first amendment to the notice of commencement of investigation that narrowed the scope of the end use of the fabrics to the apparel and footwear industries.

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8. Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/m².
 9. Woven fabrics of synthetic staple fibres, containing less than 85 percent by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170 g/m².
 10. Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200 g/m².
 11. Woven fabrics of synthetic staple fibres, containing less than 85 percent by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m².
 12. Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m².
 13. Brooks suggested the following: "for use by textile converters only, and only to produce dyed or finished fabrics for the apparel and footwear industries and products."

DIFCO

DIFCO, of Montréal, Quebec, is a vertically integrated producer of performance fabrics with production facilities located in Magog, Quebec. It produces fabrics using aramid, cotton, polyester and rayon fibres, in weights ranging from 70 g/m² to 500 g/m². DIFCO opposed the request for tariff relief. Although it stated that it does not currently produce identical or substitutable fabrics, it alleged that it has the equipment in place at its Magog facility to produce the required greige fabrics. In this regard, DIFCO stated that it could produce sample fabrics in 8 to 10 weeks, which would meet Doubletex's requirements.

Following the issuance of two amendments to the notice of commencement of investigation, DIFCO did not change its position regarding Doubletex's request for tariff relief.¹⁴

Domestic Users/Importers of the Subject Fabrics

Glensport Inc. (Glensport)

Glensport, of Montréal, Quebec, a manufacturer of ladies' apparel, supported the request for tariff relief because it would provide potential cost savings, versatility of supply, quicker delivery times of fabrics in desired colours and better service to its customers. It stated that there are no other competitive products available from domestic producers.

Lana Lee Fashions Inc. (Lana Lee)

Lana Lee, of Montréal, Quebec, a manufacturer of ladies' apparel, stated that it has been using fabrics supplied by Doubletex for the past 10 years. It supported the request for tariff relief because: (1) it prefers to do business with a Canadian textile converter that has faster on-time delivery and ongoing customer support; (2) it welcomes any possible reduction in fabric costs, which could translate into an increase in sales volumes; and (3) it would become more competitive vis-à-vis manufacturers in the United States and other parts of the world. Lana Lee indicated that there are no identical or substitutable fabrics available from other domestic sources.

Linda Lundström Inc. (Lundström)

Lundström, of Toronto, Ontario, a manufacturer of ladies' apparel, supported the request for tariff relief. It submitted that such relief would enable it to reduce costs and offer more competitive pricing, thereby increasing sales. In this regard, Lundström indicated that the cost of fabric represents approximately 25 to 35 percent of the wholesale price of a garment and, therefore, that less expensive fabric could have a significant impact on this price level. It stated that identical or substitutable fabrics are not available from other Canadian suppliers.

Lubertex Inc. (Lubertex)

Lubertex, of Montréal, Quebec, is primarily an importer of unbleached 100 percent cotton and polyester/cotton blends for the apparel and home furnishings industries. It generally sends fabrics out for further processing to commission dyers and printers. Lubertex stated that it favours the removal of the customs duty on the subject fabrics because this would allow it to become more competitive in an

14. By letter dated April 30, 2002, DIFCO confirmed its continued opposition to the request for tariff relief.

increasingly difficult market. It argued that tariff relief should also apply to importers that subcontract their dyeing and printing operations.

By letter dated July 12, 2001, the CCRA advised the Tribunal that, since the printing process is not covered under the definition of dyeing or finishing, importers that subcontract out to produce a printed finished product would not qualify for tariff relief, should it be granted. However, importers that subcontract their dyeing operations would be entitled to tariff relief according to a CCRA opinion dated August 26, 1998.

REPLY SUBMISSION

In its response of November 8, 2001, Doubletex submitted that DIFCO had not demonstrated its ability to produce identical or substitutable fabrics. Doubletex indicated that it attempted, at one time, to work with DIFCO on a program for cotton greige fabrics made of high-twist yarns but that, after great time and expense, DIFCO agreed that it could not meet Doubletex's requirements.

With respect to Brooks' opposition to the request for tariff relief, Doubletex submitted that Brooks does not sell any products to the apparel and footwear industries and that Brooks' allegations that its business would be adversely affected are grossly exaggerated. In this regard, Doubletex stated that greige cotton fabrics with high-twist yarns have been duty free for four years, without any impact on Brooks. On the question of substitutability, Doubletex indicated that the only beneficiaries of tariff relief would be textile converters importing greige fabrics for converting in Canada and selling dyed and finished fabrics to the apparel and footwear industries. As such, there would be no impact on Brooks' business, since companies making and selling products that compete with Brooks' home furnishing products would be ineligible for the tariff relief. Moreover, Doubletex stated that the Tribunal has, in past cases, acknowledged that fabrics made from open-end or air-jet yarns are not substitutable for ring-spun yarns.

OTHER INFORMATION

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada maintains quota restraints on woven fabrics of cotton, containing 85 percent or more by weight of cotton, mixed solely with polyester staple fibres, unbleached and bleached (sub-categories 32.1 and 32.2), imported from the Republic of China (China) (sub-category 32.2 only), Hong Kong and Chinese Taipei. Accordingly, this coverage includes the subject fabrics of heading Nos. 52.08 and 52.09.

DFAIT also informed the Tribunal that Canada maintains quota restraints on woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed solely with polyester staple fibres, and on woven fabrics of polyester staple fibres mixed solely with cotton, unbleached and bleached (sub-categories 36.1 and 36.2), imported from China, Hong Kong, the Republic of Korea and Chinese Taipei. Accordingly, this coverage includes the subject fabrics of heading Nos. 52.10, 52.11, 55.12, 55.13 and 55.14.

DFAIT also indicated that it would consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove customs duties on the basis of non-availability. Ex-quota treatment will only be granted in cases where it can be demonstrated that there is an extra charge for using products under quota or where goods are not otherwise available in Canada.

The CCRA indicated that there would be no additional costs, over and above those normally incurred by it, to administer the tariff relief on the subject fabrics, should it be granted.

ANALYSIS

The Minister's terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff and, in so doing, to take into account all relevant factors, including the substitutability of an imported fabric for a domestic fabric and the ability of domestic producers to serve the Canadian downstream industries. Consequently, the Tribunal's decision on whether to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

Doubletex's revised request for tariff relief covers certain imported woven fabrics with high-twist yarns, of cotton/polyester and polyester/cotton, for use by textile converters only to produce dyed and finished fabrics for the apparel and footwear industries. In essence, Doubletex claimed that identical or substitutable fabrics are not available in Canada. Initially, three domestic textile mills, namely, Brooks, Consoltex and DIFCO, opposed the request. Ultimately, Consoltex withdrew its opposition, while DIFCO maintained its opposition to the request. Brooks' position, however, was unclear.

At the outset, Brooks alleged that it produces identical or substitutable fabrics and that the removal of the customs duty on the subject fabrics would compromise the production of its greige and finished fabrics and adversely impact employment and investment. After the first amendment to the notice of commencement of investigation, restricting the request to the footwear and apparel industries, Brooks submitted comments suggesting a minor modification to the end-use provision, but not commenting on whether this new proposal would remove its opposition to the request for tariff relief. In any event, it is clear from the evidence that Brooks' fabrics are destined for the production of its home furnishings and are not available for open-market sales. In addition, Brooks does not sell to the apparel or footwear industries and, therefore, does not compete with Doubletex in this market. By amending its request for tariff relief to a specific end use, i.e. apparel and footwear, Doubletex has removed any possible threat to Brooks' operations. In light of the foregoing, the Tribunal is of the view that Brooks will not suffer any financial loss or employment reduction, should tariff relief be granted. With respect to Brooks' proposed amendment to the product definition, the Tribunal is of the view that the end-use provision, as incorporated in the two amendments to the notice of commencement of investigation, is sufficiently clear.

DIFCO alleged that it has the capability to produce identical or substitutable fabrics, in that it has the equipment in place at its Magog facility to produce sample fabrics in 8 to 10 weeks, which would meet Doubletex's requirements. In this regard, the Tribunal notes that DIFCO did not provide any evidence to support a conclusion of imminent production, such as orders on hand or actual sales that would demonstrate that DIFCO has the ability to serve the needs of Doubletex. In a number of past cases,¹⁵ the Tribunal has indicated that the onus rests on domestic textile producers to provide evidence, not merely assertions, of their ability to produce identical or substitutable fabrics. Therefore, the Tribunal concludes that DIFCO has not demonstrated, to the Tribunal's satisfaction, that it will be able, in the foreseeable future, to supply identical or substitutable fabrics to Doubletex and other potential buyers.

As to the claim that tariff relief would apply to textile converters only and that importers that subcontract certain operations would not qualify for tariff relief, the CCRA has indicated, in the past, that importers that subcontract their dyeing operations would be entitled to tariff relief. However, the CCRA

15. See, for example, *Re Request for Tariff Relief by Ballin* (27 October 1999), TR-97-012 at 14; *Re Request for Tariff Relief by Tribal Sportwear* (24 August 1999), TR-98-019 at 10.

advised the Tribunal that the printing process is not covered under the definition of dyeing or finishing and, therefore, importers that subcontract out to produce a printed fabric would not qualify for tariff relief.

With regard to the issue of net economic impact, the Tribunal sees no cost, other than the corresponding duty revenues forgone by the government, as a result of the tariff relief on the cotton/polyester and polyester/cotton fabrics requested by Doubletex. On the basis of the information available to the Tribunal, tariff relief would provide yearly benefits to Doubletex in excess of \$200,000. Tariff relief would also provide benefits to other importers of the subject fabrics in the form of reduced costs. In summary, the Tribunal finds that the tariff relief requested by Doubletex would provide net economic gains for Canada.

The Tribunal interprets Doubletex's request that tariff relief be effective "immediately" to mean that Doubletex would like tariff relief to be effective as of the date of its request. The Tribunal has stated, in previous cases, that it will not consider recommending such relief other than in exceptional circumstances.¹⁶ Doubletex has provided no evidence to warrant such a recommendation.

RECOMMENDATION

In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations, from all countries, of woven fabrics of cotton mixed solely with polyester staple fibres, unbleached or bleached, ring-spun, having a metric twist factor ($[\text{turns per metre}] \times [\text{square root of tex}] \times 0.01$) of 45 or more in the warp or the weft, of heading Nos. 52.08, 52.09, 52.10 and 52.11, for use by textile converters only to produce dyed and finished fabrics for the apparel and footwear industries; and woven fabrics of polyester staple fibres mixed solely with cotton, unbleached or bleached, ring-spun, having a metric twist factor ($[\text{turns per metre}] \times [\text{square root of tex}] \times 0.01$) of 45 or more in the warp or the weft, of heading Nos. 55.12, 55.13 and 55.14, for use by textile converters only to produce dyed and finished fabrics for the apparel and footwear industries.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Ellen Fry
Ellen Fry
Member

16. See, for example, *Re Request for Tariff Relief by Peerless Clothing* (24 January 2001), TR-2000-001 at 7; *Re Request for Tariff Relief by Ballin* (9 March 2001), TR-2000-004 at 6; *Re Request for Tariff Relief by Tantalum Mining Corporation of Canada* (21 March 2001), TR-2000-003 at 4; *Re Request for Tariff Relief by Majestic Industries (Canada)* (12 January 2001), TR-2000-002 at 4.