



**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
GIBSON TEXTILE DYERS LTD.
REGARDING
ACRYLIC FABRICS**

JULY 31, 2002

GIBSON TEXTILE DYERS LTD.

REQUEST NO. TR-2001-001

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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 September 10, 2001, pursuant to the Minister's reference, the Tribunal received a request from Gibson Textile Dyers Ltd. (Gibson), of Toronto, Ontario, for the removal, for an indeterminate period of time, of the customs duty on importations, from all countries, of plain woven fabrics, solely of acrylic staple fibres, for use in the manufacture of retractable awnings and sun umbrellas. Gibson also sought tariff relief retroactive to January 1, 1997.

On December 21, 2001, Gibson filed further information with respect to its request. On January 31, 2002, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,³ which was distributed to known interested parties. The fabrics under investigation were described in the notice as "plain woven fabrics, solely of acrylic staple fibres made from 2-ply yarns, having a decitex per single yarn of 295 or more but not exceeding 315 decitex, of a weight of 280 g/m² or more but not exceeding 320 g/m², of subheading No. 5512.29, for use in the manufacture of retractable awnings [and] sun umbrellas (the subject fabrics)."

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. A request for information was also sent to potential users and importers of the subject fabrics. A letter was sent to the Canada Customs and Revenue Agency (CCRA), requesting a complete description of the physical characteristics of a sample submitted by Gibson, an opinion on whether the tariff relief is administrable and suggested wording should tariff relief be recommended. Letters were also sent to a number of other government departments requesting information and advice.

A staff investigation report summarizing the information received from the CCRA and other government departments, Gibson, 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, Cavalier Textiles Inc. (Cavalier) and Gibson filed submissions with the Tribunal.

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

1. The terms of reference were last modified in 1999.
2. R.S.C. 1985 (4th Supp.), c. 47.
3. C. Gaz. 2002.I.341.

PRODUCT INFORMATION

The subject fabrics, imported from Austria, are used in the manufacture of retractable awnings and sun umbrellas. Gibson performs the entire cutting, sewing, finishing and quality control of the end products at its facility in Scarborough, Ontario.

As of January 1, 2002, the subject fabrics, classified for customs purposes under classification No. 5512.29.00.00 of the schedule to the *Customs Tariff*,⁴ 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. The MFN tariff will remain at 16 percent *ad valorem* until December 31, 2002, and then will be reduced to 15 percent *ad valorem* and 14 percent *ad valorem* on January 1, 2003, and January 1, 2004, respectively.

REPRESENTATIONS

Gibson

Gibson was founded in 1929. It currently manufactures retractable awnings and sun umbrellas. It is also a dye house and a commission finishing house and acts as a distributor of finished fabrics for other awning manufacturers and boat cover producers.

In its request for tariff relief, Gibson claimed that identical or substitutable fabrics were not available in Canada and that foreign suppliers are able to offer the subject fabrics in 145 different patterns and colours. Gibson indicated that the quantity of acrylic fabrics required by the Canadian market does not justify Canadian production of these fabrics. Gibson stated that tariff relief would enable it to reduce costs thereby allowing it to compete more effectively against imports of finished products from the United States, France and Italy. This, according to Gibson, would result in more sales. Gibson also stated that the duty savings would be used to increase marketing efforts in the sale of awnings and sun umbrellas.

Textile Industry

Barrday, Inc. (Barrday)

Barrday, of Cambridge, Ontario, indicated that it does not produce acrylic fabrics and that it does not intend to do so in the future.

Cavalier

Cavalier, of Saint-Laurent, Quebec, is a producer of specialized spun yarns and strand⁵ yarns. Cavalier opposed the request for tariff relief because it supplies yarns to Shuford Mills Inc. (Shuford), a weaver and distributor of acrylic fabrics, located in Hickory, North Carolina.

Cavalier stated that it began research and development work on the above-mentioned yarns some three years ago in close co-operation with Shuford. In 2000, Cavalier began selling substantial quantities of yarn to Shuford. Cavalier stated that tariff relief on the subject fabrics would negatively affect its Canadian production of yarns destined for the United States. Cavalier indicated that Canadian awning manufacturers export their products, particularly to the states bordering the Great Lakes region. Cavalier stated that tariff

4. S.C. 1997, c. 36.

5. A single fibre, filament or monofilament.

relief would also affect the ability of its U.S. customers to sell fabrics in the Canadian market, consequently impacting its own business.

While acknowledging that there is no Canadian manufacturer of acrylic fabrics, Cavalier indicated that, under the *North American Free Trade Agreement*,⁶ U.S.-made fabrics can enter Canada duty free. Cavalier submitted that it has invested a significant amount of money, time and resources to develop this business. Cavalier stated that it chose to produce these specialized yarns because it had the highly qualified labour force required and that these products would be less susceptible to import pressure. Therefore, it would be unfair to face duty-free competition from outside NAFTA, as Cavalier is about to reap the benefits of its investment.

Shuford

Shuford stated that it is a major manufacturer of 100 percent acrylic fabrics. It buys the yarns to produce these fabrics from Cavalier. Shuford stated that it began manufacturing these fabrics three years ago. Shuford submitted that tariff relief on the subject fabrics would negatively affect its current business in the United States and, in turn, that of Cavalier, since Canadian awning manufacturers export their products to the United States, particularly to the Great Lakes region. Shuford stated that tariff relief would also affect its ability to enter the Canadian market.

While acknowledging that there is no Canadian producer of acrylic fabrics, Shuford stated that, under NAFTA, U.S.-produced fabrics can enter Canada duty free. Shuford indicated that Cavalier has developed the expertise to produce the yarns that are required in the manufacture of these high-quality fabrics. Shuford is concerned about the potentially damaging impact that this proposed tariff relief would have on one of its most valued suppliers.

Other

J. Ennis Fabrics Ltd. (Ennis)

Ennis, of Edmonton, Alberta, is a distributor of acrylic fabrics for many manufacturers of awnings, sun umbrellas, boat tops, boat covers and outdoor furniture. It indicated that acrylic fabrics are not manufactured in Canada. Ennis supported Gibson's request for tariff relief on the basis that it should not be end-use specific, thus enabling all importers/users to purchase all imported acrylic fabrics duty free that are classified in subheading No. 5512.29.⁷ According to Ennis, this would be fair and create a level playing field. Ennis indicated that, because acrylic fabrics are produced using solution-dyed fibres that give them extreme ultra-violet light resistant properties, they are used in a number of applications.

Ennis stated that, should tariff relief be granted as requested, there would be no benefit or cost to its firm. It would just mean that more acrylic fabrics would be purchased from Europe than from the United States and Mexico. Ennis also indicated that, if only selected countries or importers were given duty relief, it would face fabric costs higher than those of its competitors and that its customers would be put in an unfair

6. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

7. On March 12, 2002, the Tribunal advised Ennis that it had decided not to expand the scope of the investigation and that, should it wish to obtain tariff relief for all other end uses, a new request would have to be filed according to the Tribunal's *Textile Reference Guide*. To expand the scope of the investigation at such a late stage in the process, in order to cover all other end uses, would have required the Tribunal to re-open its investigation and issue a notice of amendment to the notice of commencement of investigation. The Tribunal was of the view that to do so would unduly delay the issuance of a recommendation in respect of Gibson's request for tariff relief.

situation. Ennis stated that Gibson has proprietary rights to the “Sattler” product⁸ and that, should tariff relief be granted, this would give Gibson an unfair advantage over its competitors. In this connection, Ennis indicated that Gibson could import acrylic fabrics for its own production, while its competitors would be buying from distributors that had paid duty on similar fabrics.

Submissions

Cavalier

In its final submission of May 14, 2002, Cavalier indicated that its yarns are sold for fabrics used in the manufacture of boat covers, tarpaulins, awnings, outdoor furniture, sun umbrellas and convertible car tops. Cavalier submitted that granting duty-free access to the subject fabrics from all countries would seriously affect its current business and the growth potential with its U.S. customers. Cavalier indicated that there are already low-priced fabrics being imported from France, Spain, the People’s Republic of China (China) and the Republic of Korea (Korea), and that removing the duty would make these products much cheaper than those imported from the United States.

Gibson

In its response submission of May 24, 2002, Gibson stated that Shuford, a small producer, produces acrylic fabrics in two weights and in solid colours only, whereas European manufacturers offer a variety of fabrics with different stripes and patterns. As such, Shuford’s product is not the same as the subject fabrics. Gibson stated that it is not aware of any sales made by Shuford in Canada. Gibson indicated that, in the Great Lakes region, Shuford is a business competitor of Glen Raven Inc. (Glen Raven), of North Carolina. With its Sunbrella® fabric,⁹ Glen Raven has approximately 70 to 80 percent of the acrylic fabric market in North America.

Gibson submitted that tariff relief helps domestic producers reduce or eliminate duty on textile inputs not available from Canadian manufacturers. In this regard, Gibson indicated that Cavalier’s yarns are used in the manufacture of acrylic fabrics in the United States and do not affect the Canadian industry.

On the issue of pricing, Gibson stated that U.S. prices for acrylic fabrics have no bearing on its case since it is catering to the market with a European flair. Gibson indicated that imports of acrylic fabrics from Spain, China and Korea represent less than 2 percent of the market and that fabrics produced in low-wage countries such as China and Korea would, obviously, have a lower selling price.

OTHER INFORMATION

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada does not maintain quota restraints on the subject fabrics.

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

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8. Awning fabrics which are produced by Sattler AG, a leading manufacturer of technical textiles and awning materials that is based in Graz, Austria.
 9. Glen Raven makes the Sunbrella® fabric in over 100 colours; it is used in the manufacture of products such as awnings, boat covers and furniture cushions.

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.

Gibson's request for tariff relief covers acrylic fabrics for use in the manufacture of retractable awnings and sun umbrellas. Gibson claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabrics. Two textile mills, namely, Cavalier and Shuford, opposed the request. Cavalier submitted that it supplies yarns to Shuford, which is located in North Carolina, and that tariff relief on the subject fabrics would adversely affect its production of yarns destined for the United States. Shuford indicated that its business, including its ability to enter the Canadian market, would be negatively affected.

While it is uncontested that Cavalier sells acrylic yarns to Shuford, which produces fabrics for use in the manufacture of retractable awnings and sun umbrellas, it is unclear what effect, if any, tariff relief would have on Cavalier's operations. The evidence provided by Gibson indicates that, in the Great Lakes region of the United States, Shuford's principal competition is likely to come from Glen Raven's Sunbrella® fabric, which holds approximately 75 percent of the acrylic fabric market, and not from Gibson or any other Canadian producers. With respect to Shuford's potential entry into the Canadian market, this is little more than speculation, and no tangible evidence has been submitted. Furthermore, Cavalier has provided no quantitative evidence of the foreseen impact on its operation, should tariff relief be granted. Consequently, the Tribunal is unable to conclude that Cavalier would be negatively impacted if tariff relief were granted.

With respect to Ennis's contention that, if only selected countries or importers were given duty relief, its costs would be high and its customers would be put in an unfair situation, the Tribunal notes that tariff relief, when granted, applies to all countries, without discrimination. Moreover, any company engaged in the purchase of the subject fabrics for use in the manufacture of retractable awnings and sun umbrellas would benefit from any tariff relief.

Other than the corresponding duty revenues forgone by the government, the Tribunal does not believe that there will be any direct commercial costs associated with the removal of the customs duty on the importation of the subject fabrics. On the basis of the information available to the Tribunal, tariff relief would result in yearly benefits of less than \$100,000 to Gibson and other importers of the subject fabrics. In addition, tariff relief would likely provide benefits to users in the form of cost reductions, which would allow them to compete more effectively. In summary, the Tribunal finds that the tariff relief requested by Gibson would provide net economic gains for Canada.

As for Gibson's request for retroactive tariff relief to January 1, 1997, the Tribunal has stated, in previous cases, that it will not consider recommending such relief other than in exceptional circumstances.¹⁰ Gibson 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 plain woven fabrics, solely of acrylic staple fibres made from 2-ply yarns, having a decitex per single yarn of 295 or more but not exceeding 315 decitex, of a weight of 280 g/m² or more but not exceeding of 320 g/m², of subheading No. 5512.29, for use in the manufacture of retractable awnings and sun umbrellas.

Pierre Gosselin
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Presiding Member

10. See, for example, *Re Request for Tariff Relief by Peerless Clothing* (1 October 2001), TR-2000-005 at 15; *Re Request for Tariff Relief by Ballin* (9 March 2001), TR-2000-004 at 6; *Re Request for Tariff Relief by Tantalum Mining* (21 March 2001), TR-2000-003 at 4; *Re Request for Tariff Relief by Majestic Industries* (12 January 2001), TR-2000-002 at 4.