



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

REPORT TO THE MINISTER OF FINANCE

**REQUEST FOR TARIFF RELIEF BY
TRIBAL SPORTSWEAR INC.
REGARDING
CERTAIN WOVEN FABRICS OF COTTON AND
ELASTOMERIC MONOFILAMENT**

FEBRUARY 18, 2004

TRIBAL SPORTSWEAR INC.

REQUEST NO. TR-2003-001

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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 July 31, 2003, pursuant to the Minister's reference, the Tribunal received a request from Tribal Sportswear Inc. (Tribal), of Montréal, Quebec, for the immediate removal, for an indeterminate period of time, of the customs duty on importations from all countries, of certain woven fabrics of cotton and elastomeric monofilament for use in the manufacture of women's jackets, blazers, dresses, skirts, trousers, capri pants and shorts.

On October 21, 2003, 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 "woven fabrics, solely of cotton and elastomeric monofilament, containing 90 percent or more by weight of cotton, of subheading No. 5208.39, 5209.32, 5209.39, 5209.52 or 5209.59, for use in the manufacture of women's jackets, blazers, dresses, skirts, trousers, capri pants and shorts" (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), now the Canada Border Services Agency, requesting a complete description of the physical characteristics of the samples submitted by Tribal, an opinion on whether the requested tariff relief would be administrable and suggested wording to describe the subject fabrics, should tariff relief be recommended. Letters were also sent to the Department of Foreign Affairs and International Trade (DFAIT) and the Department of Industry (Industry Canada) requesting information that could assist the Tribunal in its investigation.

A staff investigation report, summarizing the information received from the CCRA, DFAIT, Tribal and questionnaire respondents, 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, Tribal filed a submission 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 on January 13, 2004.
2. R.S.C. 1985 (4th Supp.), c. 47.
3. C. Gaz. 2003.I.3444.

PRODUCT INFORMATION

Although the request for tariff relief covers fabrics imported from all countries, Tribal imports the subject fabrics from the People's Republic of China (China) and the Republic of Korea (Korea). Tribal submitted five fabric samples with its request for tariff relief.⁴

The subject fabrics are used in the manufacture of women's jackets, blazers, dresses, skirts, trousers, capri pants and shorts. The production process entails the receipt, inspection, spreading, cutting and sewing of the subject fabrics, as well as the finishing of the garments. When deemed necessary, Tribal subcontracts part of the cutting. Subcontractors in Quebec and New Brunswick handle all the sewing operations. Subcontractors also finish the products. When finished, garments are returned to Tribal for inspection and warehousing, where they are selected, packed and distributed to customers in Canada and the United States.

As of January 1, 2004, the subject fabrics, classified for customs purposes under classification No. 5208.39.90.10, 5209.32.90.00, 5209.39.00.10, 5209.52.00.00 or 5209.59.00.10 of the schedule to the *Customs Tariff*,⁵ are dutiable at 12.0 percent *ad valorem* under the Most-Favoured-Nation Tariff and at 8.5 percent under the Costa Rica Tariff, and are duty free under the United States Tariff, the Least Developed Country Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

REPRESENTATIONS

Clothing Industry

Tribal

Tribal has been manufacturing women's sportswear, including pants, jackets, tops and suits, since 1970. In its request for tariff relief, Tribal claimed that there are no domestic textile manufacturers that make cotton fabrics with cotton yarns that are plied with an elastomeric monofilament, which gives the fabrics their excellent comfort and stretch capability. According to Tribal, this composition makes the fabrics unique and very different from any fabric available from domestic textile manufacturers. In addition, the fabrics are very easy to use in the manufacture of apparel.

Tribal indicated that the fact that cotton/spandex fabrics are not available in Canada was established in a previous case.⁶ Moreover, Tribal stated that the Tribunal found that non-cotton/spandex fabrics, including 100 percent cotton and cotton/polyester blend fabrics, were not substitutable for the cotton/spandex fabrics.

Tribal stated that the women's fashion industry is moving towards the greater use of high-quality stretch fabrics that are available in fashionable colours. Tribal stated that it can create garments with stretch fabrics that are stylish, have a good fit and can be worn comfortably during the workday and while

4. Fabric samples 725 and 712 were dyed satin weaves weighing 181 g/m² and 286 g/m² respectively; sample 714 was a dyed 3-thread twill weave weighing 249 g/m²; sample 846 was a printed 3-thread twill weave weighing 261 g/m²; and sample 754 was a printed satin weave weighing 224 g/m². All samples contained 95 percent or more by weight of cotton.

5. S.C. 1997, c. 36.

6. *Re Request for Tariff Relief by Tribal Sportswear Inc.* (24 August 1999), TR-98-019 (CITT) [*Tribal*]. The Tribunal recommended tariff relief on importations of woven fabrics of cotton, 3-thread twill, containing 98 percent by weight of cotton and 2 percent by weight of elastomeric strip, dyed, weighing more than 200 g/m², of subheading No. 5209.32, for use in the manufacture of women's pants, skirts and shorts.

travelling on business. Tribal also indicated that garments made with the subject fabrics have easy-care properties, which is another important aspect of today's women's fashion, especially for women in the work force. Tribal indicated that the women's fashion industry changes rapidly and that, in order to exploit current trends, Tribal needs to move quickly. According to Tribal, it must be able to obtain the subject fabrics in the quantities needed with short lead times and at competitive prices. Tribal indicated that textile mills in China and Korea are very large-scale operations and are very responsive to its needs in terms of quality, quantity, delivery times and pricing.

Tribal indicated that the main reason for seeking tariff relief is to allow greater use of the subject fabrics, which are growing in importance in women's fashion, and to allow it to remain competitive in the Canadian and U.S. markets that are demanding garments made with the subject fabrics. Tribal stated that it must compete with imports of finished garments made with the subject fabrics, primarily from the Orient. Such imports are able to outsell Tribal's similar or equivalent garments if they are not made with the subject fabrics. Tribal also stated that, since January 1, 2003, the Least Developed Countries (LDCs) are able to export garments made with the subject fabrics to Canada, duty free and quota free.

Tribal indicated that the removal of the customs duty on imports of the subject fabrics would allow it to compete in the market and would likely generate increased sales and revenue. According to Tribal, this would allow it to retain or increase its employment levels and those of its subcontractors. Tribal stated that consumers would be able to benefit to the extent that it could reduce prices as a result of obtaining tariff relief.

Tribal submitted that tariff relief would allow it to continue manufacturing operations in Canada and investment in that business. Tribal stated that, if it were unable to compete due to the high costs of fabrics that are not made in Canada, it would face tremendous pressure to rethink its strategy, including importing finished garments rather than manufacturing them in Canada.

In its final submission, Tribal reiterated that Sunshine Mills Inc. (Sunshine) does not currently make fabrics that are identical to or substitutable for the subject fabrics. It stated that Sunshine has not provided samples of such fabrics, any evidence of trial production runs or corporate planning documents that outline how identical or substitutable fabrics could be produced with existing equipment, nor has it indicated what the cost would be, who would perform the requisite dyeing and printing, and what the commercial terms and prices would be. Tribal submitted that, on the basis of the evidence, Sunshine is a producer of cotton and polyester/cotton fabrics and focuses primarily on the home furnishings market. Moreover, Sunshine has not provided any evidence to support the claim that its sales would be adversely affected if tariff relief were granted. In this regard, Tribal indicated that Sunshine has not been adversely affected by the existing tariff relief on cotton/elastomeric fabrics that are similar to the subject fabrics, which has been in effect since the Tribunal's 1999 recommendation in *Tribal*.

Lana Lee Fashions Inc. (Lana Lee)

Lana Lee, of Montréal, Quebec, was incorporated in 1947 and manufactures women's separate and co-ordinated sportswear, including pants, jackets, skirts and tops. Lana Lee supported Tribal's request for tariff relief on the subject fabrics, since identical or substitutable fabrics are not available from Canadian producers.

Lana Lee stated that the subject fabrics have special stretch characteristics and easy-care properties that are demanded by consumers. Lana Lee indicated that its competitors are producing finished goods offshore that are made with the subject fabrics. According to Lana Lee, tariff relief on the subject fabrics

would enable it to compete on an equal footing; otherwise, it may be forced to consider moving its manufacturing operation offshore.

Textile Industry

Consoltex Inc. (Consoltex)

Consoltex, of Ville Saint-Laurent, Quebec, a major producer of fabrics of man-made fibres, indicated that it did not want to participate in the investigation.

Sunshine

Sunshine, of Toronto, Ontario, has been producing greige fabrics of 100 percent cotton and polyester/cotton blends for over 18 months at its plant located in Tracadie-Sheila, New Brunswick. Sunshine indicated that it is a start-up company that provides employment to over 100 persons in a remote area. The principal end uses for the fabrics produced by Sunshine are bed sheets, duvet covers, window coverings, garments and upholstery fabrics.

Sunshine opposed Tribal's request for tariff relief. Although Sunshine indicated that it currently does not produce fabrics identical to or substitutable for the subject fabrics, it stated that it possesses state-of-the-art equipment that could enable it to produce cotton-rich greige fabrics similar to the subject fabrics without further investment. In this regard, Sunshine stated that it could produce trial samples of these fabrics within a couple of weeks of obtaining the appropriate yarns. Furthermore, Sunshine indicated that dyeing and printing could be subcontracted, thus enabling it to deliver fabrics according to the customer's requirements.

Sunshine stated that, if tariff relief were granted, it would be adversely affected because duty-free imports of the subject fabrics from low-cost countries would put it at a disadvantage, which might result in the loss of Canadian jobs. Moreover, Sunshine stated that the subject fabrics would enter Canada duty free, while imports of cotton and polyester/cotton yarns destined for weaving would continue to be subject to duties. According to Sunshine, this would have a negative impact on domestic manufacturers of woven fabrics.

Following the filing of Tribal's final submission, Sunshine, by letter dated January 14, 2004, sought permission from the Tribunal to file a fabric sample. The Tribunal determined that there was sufficient evidence on the record and, therefore, denied the request.⁷

OTHER INFORMATION

DFAIT informed the Tribunal that Canada currently maintains quota restraints on finished (e.g. dyed) woven fabrics of cotton (subcategory 32.2) imported from China and Chinese Taipei. Accordingly, this coverage includes the subject fabrics of subheading No. 5208.39, 5209.32, 5209.39, 5209.52 or 5209.59.

In addition, DFAIT 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 of domestic supply. Ex-quota treatment will be granted only in cases where it can be

7. Letter dated January 16, 2004.

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 its normally incurred costs, to administer the tariff relief should it be granted on the subject fabrics.

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.

According to Tribal, there are, at present, no domestic textile manufacturers that make cotton fabrics with cotton yarns that are plied with an elastomeric monofilament. Sunshine submitted that it has the capability of producing such fabrics according to the customer's requirements.

The Tribunal notes that no domestic textile manufacturer, other than Sunshine, has opposed Tribal's request for tariff relief. Sunshine has only recently started operations and stated that it currently does not produce fabrics identical to or substitutable for the subject fabrics. Although Sunshine indicated that it is capable of producing such fabrics and claimed that it could make trial samples within a couple of weeks of obtaining the appropriate yarns, it provided no commercial information on the fabrics that could be produced. The Tribunal is of the view that production at Sunshine is not imminent. Sunshine is not in a position to supply commercial quantities of cotton/spandex fabrics in the Canadian marketplace that would be acceptable to Tribal and other potential buyers.

A conclusion of foreseeable and imminent production could be based on such evidence as orders on hand or actual sales. As stated by the Tribunal in previous cases, it is the responsibility of the domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable products. Therefore, the Tribunal concludes that Sunshine has not demonstrated, to the Tribunal's satisfaction, that it will be able to supply identical or substitutable fabrics to Tribal and other potential buyers in the foreseeable future.

Should circumstances change, Sunshine could make a request to the Tribunal, according to paragraph 19 of the Textile Reference Guidelines, to commence an investigation for the purpose of recommending the termination of the order for tariff relief made by the Minister.

Sunshine also stated that, should tariff relief be granted, the subject fabrics would enter Canada duty free, while imports of cotton and polyester/cotton yarns destined for weaving would continue to be subject to duties. Under these circumstances, Sunshine could file separate requests to the Tribunal for tariff relief on such yarns. The Tribunal notes that, on October 2, 2003, it received a request from Sunshine for tariff relief on certain imports of very fine ring-spun yarn of cotton fibres.⁸

8. On January 27, 2004, the Tribunal issued a notice of commencement of investigation covering importations of single ring-spun cotton yarn, measuring less than 166 decitex (36s and finer) for use in the manufacture of woven fabrics. At present, Sunshine imports such yarn from India, Pakistan and Egypt.

In light of the foregoing, the Tribunal is of the view that there are no domestic fabrics identical to or substitutable for the subject fabrics. Therefore, although the government would forgo the corresponding duty revenues, which are estimated to be about \$100,000 annually, the Tribunal does not believe that there would be any direct commercial costs to Sunshine associated with the removal of the customs duty on the importation of the subject fabrics. On the basis of the information provided to the Tribunal, tariff relief would provide yearly benefits to users of the subject fabrics in the form of potentially increased sales and employment, as well as reduced costs, which could translate into benefits to the consumer in terms of lower prices. In summary, the Tribunal finds that the tariff relief requested by Tribal would provide net economic gains for Canada.

Tribal requested that tariff relief be effective “immediately.” The evidence presented to the Tribunal to justify such a request is that the subject fabrics are used, at present, in the manufacture of women’s apparel and are similar to the fabrics on which tariff relief has previously been granted. It is the Tribunal’s view that the commencement of tariff relief is warranted as soon as possible in order to meet selection and purchasing requirements for the fall 2004 fashion season.

RECOMMENDATION

In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, and commence at the earliest possible date following this recommendation, on importations from all countries of woven fabrics, solely of cotton and elastomeric monofilament, containing 90 percent or more by weight of cotton, of subheading No. 5208.39, 5209.32, 5209.39, 5209.52 or 5209.59, for use in the manufacture of women’s jackets, blazers, dresses, skirts, trousers, capri pants and shorts.

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