



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
RICHLU MANUFACTURING LTD.  
REGARDING  
CERTAIN WOVEN FABRICS OF COTTON**

**SEPTEMBER 9, 2003**

**RICHLU MANUFACTURING LTD.**

**REQUEST NO. TR-2002-001**

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## INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference<sup>1</sup> from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.<sup>2</sup> 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 June 4, 2002, pursuant to the Minister's reference, the Tribunal received a request from Richlu Manufacturing Ltd. (Richlu), of Winnipeg, Manitoba, for the removal, for an indeterminate period of time, of the customs duty on importations, from all countries, of certain woven fabrics of cotton, for use in the manufacture of men's outerwear. Richlu also sought tariff relief effective "immediately".

On November 6, 2002, Richlu amended its request for tariff relief to include cotton fabrics of a lighter weight. The fabric sample that was provided with the amended request was sent to the Canada Customs and Revenue Agency (CCRA) for analysis on November 14, 2002. On December 23, 2002, the Tribunal received the CCRA's final report, including a revised description that covered the full weight range of the fabrics on which Richlu had requested tariff relief. On December 27, 2002, Richlu concurred with the new product description.

On January 23, 2003, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,<sup>3</sup> which was distributed to known interested parties. The fabrics under investigation were described in the notice as "dyed, woven fabrics solely of cotton, composed of single yarns in both directions, measuring 600 decitex or more but not exceeding 900 decitex per single yarn, weighing 290 g/m<sup>2</sup> or more but not exceeding 410 g/m<sup>2</sup>, of subheading No. 5209.39, for use in the manufacture of men's parkas and similar coats, coveralls and vests" (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. As noted above, a new letter was sent to the CCRA requesting a complete description of the physical characteristics of the two samples submitted by Richlu, an opinion on whether the requested tariff relief would be administrable and suggested wording to describe the 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 requesting information that could assist the Tribunal in its investigation.

A staff investigation report summarizing the information received from the CCRA, DFAIT, Richlu, 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, DIFCO Performance Fabrics Inc. (DIFCO) and Richlu filed submissions with the Tribunal. Following receipt of these submissions, on June 9 and July 9, 2003, the Tribunal requested additional information and clarification on pricing and other issues from interested parties. Given that there was sufficient information on the record, the Tribunal decided that a public hearing was not required for this investigation.

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1. The terms of reference were last modified in 2002.  
2. R.S.C. 1985 (4th Supp.), c. 47.  
3. C. Gaz. 2003.I.211.

## PRODUCT INFORMATION

Although the request for tariff relief covers fabrics imported from all countries, Richlu presently imports the subject fabrics from the People's Republic of China (China) and the United States. Richlu also intends to import the subject fabrics from India. The sample submitted with Richlu's original request for tariff relief was a dyed fabric made solely of cotton fibres and woven in a modified basket weave<sup>4</sup> that measured 728 decitex<sup>5</sup> per single yarn in the warp and 861 decitex per single yarn in the weft. The fabric weighed 376 g/m<sup>2</sup>. The second sample provided with Richlu's amended request for tariff relief was also a dyed fabric made solely of cotton fibres that measured 653 decitex per single yarn in the warp and 825 decitex per single yarn in the weft. The fabric weighed 315 g/m<sup>2</sup>.

The subject fabrics are used in the manufacture of men's parkas and similar coats, coveralls and vests. During the production process, the subject fabrics are cut and sewn into men's outerwear. No operations are subcontracted.

As of January 1, 2003, the subject fabrics, classified for customs purposes under classification No. 5209.39.00.90 of the schedule to the *Customs Tariff*,<sup>6</sup> are dutiable at 12.5 percent *ad valorem* under the MFN Tariff and at 10.5 percent *ad valorem* 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. The MFN Tariff will be reduced to 12.0 percent *ad valorem* on January 1, 2004. However, under tariff item No. 9935.00.00, woven fabrics of cotton (excluding denim or unbleached fabrics), containing 85 percent or more by weight of cotton, of Chapter 52, for use in the manufacture of apparel or apparel accessories, are dutiable at 10.0 percent *ad valorem* under the MFN Tariff and are duty free under the United States Tariff, the Least Developed Country Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff, the Chile Tariff and the Costa Rica Tariff.

## REPRESENTATIONS

### Clothing Industry

#### Richlu

In its request for tariff relief, Richlu claimed that there are no domestic mills that produce fabrics identical to or substitutable for the subject fabrics. It stated that tariff relief would enable its end products to be more competitive. Richlu indicated that it presently purchases "seconds"<sup>7</sup> with relatively minor colour distortions and flaws from U.S. sources, but, with U.S. mills operating at less than full capacity and catering primarily to their larger U.S. customers, its access to this type of fabric is currently restricted. In addition, Richlu stated that, should the costs of inputs increase beyond the market's ability to absorb them, it may be forced to increase imports of finished goods, thereby compromising domestic production and jobs.

Richlu submitted that the canvas blends (polyester/cotton and nylon/cotton) produced by Consoltex Inc. (Consoltex) have only limited acceptability in the marketplace. Consequently, Richlu stated that it and its competitors only use 100 percent cotton canvas. With respect to DIFCO'S opposition to the request for

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4. "Basket weave" is a variation of the plain weave in which two or more warp and filling threads are woven side by side to resemble a plaited basket.
  5. One decitex is one tenth of a tex unit. Tex is a unit for expressing linear density, equal to the weight in grams of one kilometre of yarn.
  6. S.C. 1997, c. 36.
  7. "Seconds" are imperfect woven or knitted fabrics containing flaws in the weave, finish or dyeing.

tariff relief, Richlu submitted that DIFCO had made no effort to supply such fabrics. It stated that 11 or 12 years ago, it was buying 85 percent of its canvas “duck”<sup>8</sup> requirements from Dominion Textiles, Inc.,<sup>9</sup> but was informed by the latter that such fabrics could no longer be supplied due to competitive pressures. Richlu submitted that, as a result of Canada’s Least Developed Country (LDC) initiative,<sup>10</sup> it could only be competitive if it continued to buy fabrics, “firsts”<sup>11</sup> and “seconds”, at world market prices.

Richlu also submitted that the market prices of fabrics are volatile and vary according to supply and demand. It submitted that its production is not locked into uniform dye lots and that, therefore, it can explore off-market channels to secure product. In this regard, Richlu stated that its minimum requirements are quality, price and lot sizes sufficient to meet orders from customers. It submitted that the pricing of the subject fabrics from the Orient enables potential savings vis-à-vis fabrics supplied by North American companies. Richlu indicated that it continues to support its traditional sources of supply, but that, as its customers constantly demand price concessions, it must be able to secure appropriate quantities and quality at prices that enable it to survive. Richlu submitted that it is not the quality of the fabrics produced by DIFCO, as judged by the samples provided, that is unacceptable, but rather the cost. It stated that it could not afford to buy from DIFCO and that, should tariff relief not be granted, it would continue to purchase fabrics outside Canada and pay duties until it is forced to import the finished garments.

## **Textile Industry**

### Consoltex

Consoltex, of Ville Saint-Laurent, Quebec, is a major producer of fabrics of man-made fibres and the largest producer of 100 percent nylon fabrics in Canada. The company is vertically integrated from the weaving to the dyeing, printing, coating and finishing of a fabric and employs some 1,000 people in its five manufacturing facilities (three weaving and two converting operations).

Consoltex opposed the request for tariff relief because it is the major Canadian textile producer of woven fabrics for the outerwear market in general and it produces and sells fabrics to manufacturers that make parkas, coveralls and vests for the work-wear market (protective and non-protective).

Consoltex stated that it considers Richlu’s request as one for tariff relief on fabrics to be used in the work-wear market, since cotton “duck” fabrics are known and have been accepted in the work-wear market for many years. However, Consoltex stated that other fabrics are also utilized. In this regard, it indicated that it sells nylon, polyester, polyester/cotton and nylon/cotton fabrics that are used to make parkas and coveralls for the non-protective work-wear market (e.g. for mechanics, postal workers and construction workers). Consoltex stated that these fabrics are treated with special finishes that enhance durability and strength in order to provide a certain protection to the wearer. Consoltex indicated that it also produces and sells fabrics

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8. A broad term for a wide range of strong, firm, closely woven, plain weave fabrics usually made from cotton or linen yarns.
  9. Once an operating division of Dominion Textiles, Inc., DIFCO is now a wholly owned subsidiary of Polymer Group, Inc. (PGI) following the purchase of Dominion Textiles, Inc. by PGI in 1998.
  10. Since January 1, 2003, textile and apparel products exported from LDCs are eligible for duty-free treatment, provided they have been manufactured or formed from inputs from any of the 48 eligible LDCs, of which 34 are located in Africa, or have been formed from inputs from General Preferential Tariff beneficiary countries (e.g. China), provided the value added in the exporting LDC is at least 25 percent. This initiative also removes existing quotas on those textile and apparel products that qualify for tariff elimination under the new rules.
  11. “Firsts” are the highest grade of yarn, cloth and other articles.

made from aramid fibres, which provide a greater degree of protection for persons working in hydro line assembly, forestry, oil exploration, fire fighting and policing (i.e. the protective work-wear market).

Consoltex stated that, in the work-wear market, all these fabrics compete with each other and that the critical factor is price. It submitted that the fact that everybody wants to pay as little as possible for non-protective and protective work-wear is not a valid reason to give an advantage to imports of the subject fabrics over Canadian fabrics through duty relief. Consoltex indicated that fabrics from China, including duties, are much cheaper than Canadian or U.S. fabrics. It stated that any savings in raw materials used in the production of finished products could help alleviate the burden vis-à-vis imports of end products, but that quality, durability and the effectiveness of protection all come before price when safety is an issue. Consoltex indicated that, with respect to non-protective work-wear, the price could be a major factor in determining competitiveness, but not for protective work-wear. Consoltex submitted that it is difficult to ensure that one business does not interfere with the other because the substitutability of fabrics is a reality in the outerwear and work-wear markets. As such, there is no valid justification to allow duty-free imports of foreign fabrics in preference to Canadian-made fabrics.

Consoltex stated that, under the *Outerwear Apparel Remission Order, 1998*,<sup>12</sup> duty remissions in respect of outerwear apparel imported into Canada during the January 1, 1998, to December 31, 2004, period are available to Canadian manufacturers of outerwear apparel. Consoltex also indicated that, under the *Outerwear Fabrics Remission Order, 1998*,<sup>13</sup> it is eligible for duty remission in respect of outerwear fabrics imported into Canada during the January 1, 1998, to December 31, 2004, period.<sup>14</sup>

#### DIFCO

DIFCO stated that, for the past 50 years, it has been manufacturing quality greige or dyed performance fabrics in various weaves, ranging from 70 g/m<sup>2</sup> to 500 g/m<sup>2</sup>, using 100 percent cotton, 100 percent polyester, polyester/cotton blends, and aramids and aramid blends. It opposed the request for tariff relief because it currently produces fabrics of 100 percent cotton in the weight ranges of 290 g/m<sup>2</sup> to 410 g/m<sup>2</sup>. DIFCO provided three samples of 100 percent cotton that it considered identical to or substitutable for the subject fabrics.<sup>15</sup>

DIFCO stated that Richlu did not contact DIFCO to ascertain whether it could produce identical or substitutable fabrics. DIFCO indicated that it has contacted Richlu and advised the company that it could bring to market the product that it requires. It alleged that, should tariff relief be granted, its competitiveness would be adversely affected and that sales and jobs would be lost. DIFCO stated that imported fabrics of similar construction and finish already have an advantage by way of low-cost materials, low wages and subsidies in their countries.

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12. Memorandum D8-11-4, Canada Customs and Revenue Agency (21 May 2003).

13. Memorandum D8-11-6, Canada Customs and Revenue Agency (18 July 2003).

14. These duty remission programs were designed to help designated Canadian apparel and fabric manufacturers meet the pressures of increased import competition from low-wage countries, as quotas are gradually eliminated under the World Trade Organization *Agreement on Textiles and Clothing*. The programs apply only to producers that benefited from earlier duty remission programs. These producers are allowed to import certain quantities of apparel or fabrics duty free to complement product lines that they make in Canada. Duty remission is restricted to amounts received by a manufacturer in 1995. These duty remission programs will expire on December 31, 2004. The evidence does not indicate that Richlu owns any historical "quota" under the *Outerwear Fabrics Remission Order, 1998*.

15. These fabric samples were sent to the CCRA for laboratory analysis.

DIFCO submitted that its product samples are virtually identical to the subject fabrics, albeit with minor variations, and, therefore, are commercially acceptable as such. DIFCO submitted that Richlu's claim that there are no domestic mills that produce such fabrics is incorrect, since it is a major producer of these types of fabrics. In this regard, it indicated that, over the past three to five years, it has upgraded its facilities with state-of-the-art equipment in order to produce quality fabrics, including dyed and water-repellent 100 percent cotton "duck" fabrics in the 339-to-407 g/m<sup>2</sup> weight range for outdoor work-wear. DIFCO submitted that it is in the process of re-introducing its company to all garment manufacturers, including Richlu, as a supplier of quality, value-added and durable, dyed and finished fabrics. DIFCO also submitted that Richlu's contention that it is restricted to the availability of "seconds" from U.S. sources should not form the basis for this request for tariff relief, since "firsts" are also available from these sources.

## **OTHER INFORMATION**

DFAIT informed the Tribunal that Canada maintains quota restraints on woven fabrics of cotton (sub-category 32.2), imported from China, Hong Kong and Chinese Taipei. Accordingly, this coverage includes the subject fabrics of subheading No. 5209.39. 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. 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, to administer the tariff relief, should it be granted. No information was received from the Department of Industry.

## **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 the Tribunal considers that such tariff relief would provide net economic gains for Canada.

In essence, Richlu claimed that there are no domestic mills that produce fabrics identical to or substitutable for the subject fabrics at competitive prices. On the other hand, Consoltex submitted that it produces and sells substitutable fabrics for the outerwear and work-wear markets, and DIFCO indicated that it has the ability to produce fabrics virtually identical to the subject fabrics.

In the course of the investigation, Consoltex provided several samples of nylon, polyester, polyester/cotton and nylon/cotton fabrics that are used to make parkas and coveralls for the non-protective work-wear market (e.g. for mechanics, postal workers and construction workers). Richlu submitted that the canvas blends (polyester/cotton and nylon/cotton) produced by Consoltex have only limited acceptability in the marketplace. The documents provided to the Tribunal indicate that Richlu makes use of 100 percent cotton "duck" fabrics in order to respond to customer demand and that fabrics containing other types of fibres, such as those produced by Consoltex, are not suitable for this demand and, therefore, not substitutable for the subject fabrics.

DIFCO provided three fabric samples made solely of cotton fibres. On the basis of the CCRA's analysis and its own examination of these fabrics, the Tribunal accepts that DIFCO's fabrics are substitutable for the subject fabrics. Richlu did not dispute that DIFCO's fabrics are substitutable in terms of physical characteristics.

However, Richlu submitted that the cost of the fabric samples produced by DIFCO is unacceptable. In this regard, the Tribunal examined the pricing information provided by Richlu with its request for tariff relief and more recent information provided by Richlu and DIFCO at the Tribunal's request.<sup>16</sup> Based on the evidence, it is clear that the market prices for such fabrics imported from China and the United States are volatile and have decreased significantly since Richlu filed its request for tariff relief. The Tribunal also notes Richlu's submission that, in exploring "off-market" channels, it is able to keep its input costs at a minimum. Because its production is not locked into uniform dye lots, Richlu has access to "off-market" prices to secure product.

The landed cost of the subject fabrics from China and India is currently significantly lower than the proposed average selling prices of DIFCO's substitutable fabrics, even with the addition of the current 10 percent *ad valorem* duty. The landed costs of the subject fabrics presently imported by Richlu from the United States are also significantly lower than the proposed DIFCO selling prices. However, the Tribunal notes that tariff relief would not affect the landed cost of imports from the United States, given that these imports are already duty free. Although import prices are volatile, as noted above, nothing on the record indicates whether, or to what extent, prices might be expected to change in the near future.

The Tribunal notes that, under the recent LDC initiative,<sup>17</sup> Richlu could import finished garments duty free, if fabric prices were at a level that made it uneconomical to continue its garment manufacturing operations. Similarly, Richlu could be under pressure from competitors that imported finished garments.

Consequently, the Tribunal is persuaded that, even in the absence of tariff relief, Richlu would not shift its purchases of the low-priced subject fabrics to the higher-priced fabrics offered by DIFCO. Hence, DIFCO is not likely to gain sales, regardless of whether tariff relief is granted. The Tribunal also notes DIFCO's submission that it has only recently started the process of re-introducing its company to garment manufacturers, including Richlu, as a supplier of fabrics such as those that are identical to or substitutable for the subject fabrics.

On the basis of the information provided to the Tribunal, tariff relief would provide yearly benefits of up to \$50,000 to Richlu.<sup>18</sup> This tariff relief would provide benefits to Richlu in the form of reduced costs, which would enable it to better position itself vis-à-vis imports of finished goods from LDCs. Given that Consoltex does not produce identical or substitutable fabrics and that DIFCO is not in a position to seriously compete on price in the current market, the Tribunal sees little cost to fabric producers if tariff relief is granted.

With respect to Richlu's request that tariff relief be effective "immediately", the Tribunal interprets this request to mean that Richlu would like tariff relief to be effective as of the date of the request. The Tribunal has stated, in previous cases, that it will not consider recommending such relief other than in

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16. Tribunal Exhibit TR-2002-001-2D (protected), Administrative Record, Vol. 2 at 20; Tribunal Exhibit TR-2002-001-30 (protected), Administrative Record, Vol. 2 at 60; Tribunal Exhibit TR-2002-001-26C (protected), Administrative Record, Vol. 2 at 50.

17. *Supra* note 10.

18. The amount of tariff relief will depend on the proportion of Richlu's purchases of the subject fabrics that it switches from imports from the United States to imports from China or India.



exceptional circumstances. Richlu has provided no evidence to justify such a request. Therefore, the Tribunal is not persuaded that the current circumstances are so exceptional<sup>19</sup> as to warrant a recommendation for retroactive tariff relief.

## 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 dyed, woven fabrics solely of cotton, composed of single yarns in both directions, measuring 600 decitex or more but not exceeding 900 decitex per single yarn, weighing 290 g/m<sup>2</sup> or more but not exceeding 410 g/m<sup>2</sup>, of subheading No. 5209.39, for use in the manufacture of men's parkas and similar coats, coveralls and vests.

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Ellen Fry  
Presiding Member

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19. See, for example, *Re Request for Tariff Relief by Doubletex* (3 July 2002), TR-2000-006 at 8 (CITT); *Re Request for Tariff Relief by Ballin* (9 March 2001), TR-2000-004 at 6 (CITT); *Re Request for Tariff Relief by Tantalum Mining* (21 March 2001), TR-2000-003 at 4 (CITT); *Re Request for Tariff Relief by Majestic Industries (Canada)* (12 January 2001), TR-2000-002 at 4 (CITT).