



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
C.S. BROOKS INC.
REGARDING
CERTAIN POLYESTER/COTTON WOVEN FABRICS**

JANUARY 21, 2004

C.S. BROOKS INC.

REQUEST NO. TR-2002-006

Tribunal Members: James A. Ogilvy, Presiding Member
Pierre Gosselin, Member
Ellen Fry, Member

Research Director: Réal Roy

Research Manager: Paul R. Berlinguette

Research Officer: Josée St-Amand

Counsel for the Tribunal: Eric Wildhaber

Registrar Officer: Karine Turgeon

Address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

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 December 13, 2002, the Tribunal received a request from C.S. Brooks Inc. (Brooks) of Magog, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations of certain polyester/cotton woven fabrics for use in the manufacture of bedding and home furnishing products.

On April 10, 2003, 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, unbleached or bleached, containing 65 percent or more by weight of polyester fibres mixed solely with cotton, of a weight not exceeding 170 g/m², of subheading No. 5407.91 or 5513.11, to be dyed or printed, for use in the manufacture of bedding and home furnishing products” (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 the sample submitted by Brooks, 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, Brooks, 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, on June 17, 2003, Les Tissages Sherbrooke Inc. (TSI) requested additional information concerning Brooks’s request for tariff relief. On August 1, 2003, the Tribunal directed that Brooks provide information on the sourcing and utilization of polyester/cotton fabrics used in the production of bedding products.⁴ On September 22, 2003, TSI made a “non-negotiable” proposal⁵ in order to resolve Brooks’s request for tariff relief and, on the same day, Brooks reiterated that its revised description of the subject fabrics,⁶ which was made in response to concerns raised by other textile manufacturers, should be used. On October 9, 2003, Consoltex Inc. (Consoltex), DIFCO Industrial Fabrics Inc. (DIFCO) and Sunshine Mills Inc. (Sunshine) were given the opportunity to provide final submissions regarding the alternative wording suggested by Brooks and TSI for the description of the subject fabrics, should the Tribunal make a recommendation for tariff relief.

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1. The terms of reference were last modified on July 4, 2002.
 2. R.S.C. 1985 (4th Supp.), c. 47.
 3. C. Gaz. 2003.I.1115.
 4. This information was provided on August 12, 2003.
 5. Tribunal Exhibit TR-2002-006-30, Administrative Record, Vol. 1 at 196.
 6. Tribunal Exhibit TR-2002-006-31, Administrative Record, Vol. 1 at 198.

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

PRODUCT INFORMATION

Although the request for tariff relief covers fabrics imported from all countries, Brooks imports the subject fabrics from India, Pakistan and the People's Republic of China (China). The sample submitted with Brooks's request for tariff relief was a bleached, plain woven polyester/cotton fabric, made from 69 percent polyester (35 percent filaments and 34 percent staple fibres) and 31 percent cotton. The fabric weighed 89 g/m².

The subject fabrics are used in the manufacture of bedding and home furnishing products. The production process entails the bleaching, if applicable, dyeing or printing, and finishing of the subject fabrics with permanent press finishes. The fabrics are then cut and sewn into finished textile bedding and home furnishing products.

As of January 1, 2004, the subject fabrics, classified for customs purposes under classification No. 5407.91.90.91, 5513.11.90.13 or 5513.11.90.23 of the schedule to the *Customs Tariff*,⁷ are currently dutiable at 14 percent *ad valorem* under the most-favoured-nation (MFN) Tariff and 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

Bedding and Home Furnishing Products Industry

Brooks

Brooks has been manufacturing bedding and home furnishing products since 1990. Brooks employs some 800 people at its Magog facility where fabrics are bleached, dyed or printed to produce a wide range of bedding and home furnishing products, including sheets, comforters, pillowcases, pillow shams, dust ruffles, draperies, valances, table rounds, duvet covers and pillows. Brooks manufactures its finished products for export to the United States and for its exclusive Canadian sales agent, Springs Canada Inc., under the names of Texmade, Wabasso, Wamsutta and Springmaid.

Brooks indicated that, until September 2002, it also operated a greige fabric manufacturing facility in Sherbrooke, Quebec, to supply most of the Magog facility's needs. However, Brooks stated that, as the Sherbrooke facility became less cost competitive, it increased its purchases of fabrics from offshore sources to supplement the fabrics at its Sherbrooke facility. The Sherbrooke facility has now been sold, and Brooks indicated that it intends to continue sourcing certain fabrics from this facility under new ownership, now operating as TSI.

Brooks claimed that there are no identical or substitutable fabrics available from Canadian textile production. In this regard, Brooks stated that, at all times, it has sourced the subject fabrics from non-domestic sources and that, as far as it is aware, the new owners of TSI will not be producing identical or substitutable fabrics, as they could not be made in Canada on a cost-competitive basis.

7. S.C. 1997, c. 36.

Brooks alleged that the market, especially the large portion served by mass retailers, demands that products be made from the 65-70 percent polyester/35-30 percent cotton fabric. Brooks indicated that the subject fabrics are also commercially different from any substitutable fabrics, in that the international price of such fabrics is much lower than that of cotton-rich polyester/cotton blends, whether produced in Canada or abroad. According to Brooks, this low price is reflected in the finished products. Brooks stated that it needs the subject fabrics in order to remain competitive, especially in the mass retailer market where retailers demand that products made from the subject fabrics be at a certain price point.

Brooks indicated that the removal of the customs duty on importations of the subject fabrics would allow it to reduce costs significantly. This, in turn, would allow it to remain competitive with importers of finished goods that have the advantage of very low labour rates in the country of origin. Brooks also stated that tariff relief would enable it to save money that could be used to invest in the automation of different processes, which would further reduce its finished product costs.

In its submissions,⁸ Brooks stated that, based on the evidence, fabrics *identical* to the subject fabrics are not produced and supplied in Canada. In this regard, Brooks indicated that DIFCO and Consoltex have not presented any evidence of the supply, or actual or planned production, of such fabrics in the Canadian market to manufacturers of bedding and home furnishing products. Brooks also submitted that Sunshine does not produce identical fabrics given that the one sample that contains a majority of polyester contains only 62 percent polyester, not 65 percent as required by the definition of the subject fabrics. Moreover, Brooks submitted that the evidence of other Canadian users of the subject fabrics, Baker Textiles Inc. (Baker), GIII Limited (GIII) and Lenrod Industries Limited (Lenrod), is clear that there are no identical fabrics available from Canadian textile production.

Brooks also submitted that no Canadian manufacturer produces and supplies fabrics *substitutable* for the subject fabrics in Canada. In this regard, Brooks alleged that fabrics of 100 percent cotton and 50 percent polyester/50 percent cotton (50P/50C) produced by TSI or Sunshine are not substitutable for the subject fabrics. Brooks submitted that 50P/50C fabrics do not meet the demands of the market for products, the prices of which are competitive with those of imported finished goods made from the subject fabrics. Brooks submitted that TSI did not state that it is willing or able to make fabrics substitutable for the subject fabrics. With respect to TSI's claim that Brooks is eligible for duty drawback on the subject fabrics that are used in the manufacture of finished products exported to the United States, Brooks submitted that this is not the case.

Brooks submitted that the high-end market in Canada is not large enough to fill the production capacity of its Magog facility. Therefore, to maintain economies of scale and the economic viability of the facility, Brooks must manufacture products for the low-end mass market for retailers such as Zellers and Wal-Mart, which it can only do competitively by using the subject fabrics. Brooks submitted that a substantial portion of imports of finished goods from China, India, Pakistan and, more recently, Bangladesh are destined for the mass market and are made in whole or in part from the subject fabrics. Moreover, Brooks submitted, the elimination of quotas on imports of textiles and clothing as of January 1, 2005, is a significant factor.⁹

8. Submissions of July 15, August 1, September 5 and 22, and October 20, 2003.

9. As part of the World Trade Organization Uruguay Round commitments, Canada is a party to the *Agreement on Textiles and Clothing*, which eliminates the system of quantitative restrictions (quotas) on imports of textiles and clothing over a 10-year implementation period ending on January 1, 2005.

Brooks submitted that tariff relief would not affect its current purchases of significant volumes of 50P/50C fabrics and better quality fabrics from TSI for its high-end products. Brooks submitted that “bed in a bag” products are fuelling the demand by mass market retailers for products made from the subject fabrics. Brooks submitted that it could not compete in this high-volume market segment using 50P/50C or 100 percent cotton fabrics from TSI or other Canadian textile producers. Brooks submitted that, as a percentage of the selling price of the finished products, duty on the subject fabrics is significant in the mass market where price is a key factor. Very small price differences can result in sales being made or lost. Brooks submitted that bedding products made from 50P/50C fabrics sell at a higher price than bedding products made from the subject fabrics. According to Brooks, the fact that some components of a “bed in a bag” product, normally the sheets and pillowcases, are made from 50P/50C fabrics does not detract from the fact that the majority of the remaining components are made from the subject fabrics. This, it was submitted, enables Brooks to be very competitive in the mass market.

Brooks submitted that TSI acknowledged that it no longer produces fabrics identical to or substitutable for the subject fabrics and that it has no intention of doing so because it is not economically viable. Rather, TSI is now focussing on 50P/50C fabrics and other cotton-rich fabrics and, therefore, has abandoned the mass market. As such, TSI cannot be adversely affected by importations of the subject fabrics destined for use in the mass market. Brooks submitted that, in the absence of tariff relief, it might be forced to reduce or close operations in Magog. This could have adverse effects on TSI’s sales of non-subject fabrics to Brooks.

In response to concerns expressed by Consoltex and DIFCO, Brooks proposed a modification of the description of the subject fabrics and the end-use provision as follows: (1) restricting the weight to 100 g/m² or less; (2) restricting the width to 183 cm or more; and (3) restricting the end use to bedding products. The proposed description of the subject fabrics, as revised, would be as follows:

Plain woven fabrics, unbleached or bleached, containing 65 percent or more by weight of polyester fibres mixed solely with cotton, of a weight not exceeding 100 g/m² and a width of 183 cm or greater, of subheading No. 5407.91 or 5513.11, to be dyed or printed, for use in the manufacture of the following bedding products: comforters, duvets, sheets, pillowcases, pillow shams and bed skirts.

With respect to TSI’s “non-negotiable” proposal,¹⁰ Brooks submitted that this constitutes an admission that TSI does not make fabrics identical to or substitutable for the subject fabrics. Brooks also submitted that TSI would not be affected by duty-free importations of the subject fabrics when they are used to manufacture sheets and that, therefore, tariff relief should also be provided for this end use. However, Brooks indicated that, if the Tribunal objects to the inclusion of fabrics destined for this end use, it is willing to accept that limitation. Brooks submitted that, to take into account its needs and those of Canadian manufacturers such as DIFCO, the above-noted definition should be used.

Baker

Baker, of Montréal, Quebec, is a family-owned business that has been in existence for 50 years. Baker is a woven textile wholesale distributor that supported the request for tariff relief because identical or substitutable fabrics are not manufactured in Canada or the United States. It indicated that such fabrics could not be produced price competitively in North America. Baker indicated that the subject fabrics are low-end inexpensive fabrics that come almost exclusively from countries like China, India and Pakistan.

10. Tribunal Exhibit TR-2002-006-30, Administrative Record, Vol. 1 at 196.

GIII

GIII, of Winnipeg, Manitoba, was incorporated in 1968. It manufactures, *inter alia*, comforters and pillows. GIII supported Brooks's request for tariff relief because identical or substitutable fabrics are not available in the Canadian market. Furthermore, GIII stated that its products have to compete with finished products imported at very low prices from China, India and Pakistan. It indicated that the anticipated benefits of the tariff relief would allow it to manufacture end products at more competitive prices, thereby recapturing sales that were lost to imported goods.

Lenrod

Lenrod, of the Town of Mount Royal, Quebec, is a Canadian division of Leggett & Platt Ltd., of Carthage, Missouri, a leading independent manufacturer of a variety of products, including components for bedding and home furnishing products. Lenrod imports the subject fabrics and converts the fabrics by cutting them to widths and lengths according to customer requirements. Lenrod's customers then cut and sew the fabrics into bedding and home furnishing products that are finally distributed to retailers.

Lenrod supported Brooks's request for tariff relief because Canadian end products could be produced more competitively, providing benefits to several Canadian manufacturers and, thus, to the Canadian economy. Lenrod claimed that no Canadian mills produce identical or substitutable fabrics. Lenrod also stated that it is not economical for Canadian mills to produce such fabrics.

Lenrod stated that the market, especially the large portion served by mass retailers, demands that end products be made from the subject fabrics. Lenrod indicated that the particular polyester-rich blend of the subject fabrics makes it physically distinguishable from other blends and that the subject fabrics are commercially different because they are less expensive than cotton-rich blends. According to Lenrod, the lower price of the subject fabrics is reflected in the prices of bedding and home furnishing products.

Lenrod indicated that the benefits of the tariff relief, if granted to all Canadian manufacturers and not only to dyers and printers, would be significant. This would allow Canadian manufacturers to produce goods that could compete with finished goods being manufactured in countries with low labour costs, thus resulting in increased employment and spending on capital improvements in Canada.

Lenrod requested that the scope of the request for tariff relief be expanded by: (1) removing the words "to be dyed or printed" from the product description, thereby including all Canadian manufacturers of bedding and home furnishing products; (2) changing the fibre mix from "more than 65% polyester mixed solely with cotton" to "a range of 55-70% polyester and 30-45% cotton"; and (3) increasing the basis weight from 170 g/m² to 245 g/m².¹¹

Textile Industry

Consoltex

Consoltex, of Montréal, is a major producer of fabrics of man-made fibres used in the apparel and home furnishing industries. Consoltex indicated that its Home Furnishings Division offers a wide range of fabrics for use in the manufacture of window coverings (curtains, drapes, valances and blinds), bedding

11. By letter dated May 15, 2003, the Tribunal advised Lenrod that it had decided not to expand the scope of the investigation. The Tribunal also indicated that Lenrod could file a separate request for tariff relief in accordance with the *Textile Reference Guide*.

products (e.g. comforters, duvet covers, cushions and pillow shams), shower curtains, tablecloths, etc. These products are sold to the residential market through mass retail chains, as well as to speciality stores and the institutional market (hospitals, restaurants and hotels).

Consoltex opposed the request for tariff relief on the basis that it produces and sells fabrics that are either similar to or substitutable for the subject fabrics, or in direct competition with the subject fabrics, that are used in bedding and home furnishing products. In this connection, Consoltex provided several fabric samples¹² used in bedding and home furnishing products.

Consoltex stated that, with the exception of bed sheet fabrics that it does not actually produce, its whole range of fabrics compete with the subject fabrics when used in all kinds of home furnishing products. Consoltex stated that, for bed sheets, the customer might have a preference for 100 percent cotton or polyester/cotton fabrics over polyester or polyester/rayon fabrics. On the other hand, Consoltex indicated that, for curtains, comforters and any bedding and household articles, there is definitely no customer preference as far as fibre content or fabric specifications are concerned, other than being washable, colourfast and tear-resistant.

Based on its knowledge of the home furnishing industry and the fabrics used in this market, Consoltex stated that the subject fabrics could not be used for comforters, bedspreads or duvet covers because they are not strong enough to meet the tear strength specifications for these end uses. Moreover, the subject fabrics are not sufficiently opaque for such uses. Consoltex indicated that the subject fabrics could be used for commodity/low-end bed sheets but not for medium- to high-end bed sheets, since the thread count is not sufficient. Consoltex stated that the subject fabrics could also be used as curtains or lining for bedspreads or comforters. In this regard, Consoltex stated that the subject fabrics compete with its substitutable fabrics made from certain polyester yarns, which give these fabrics a cotton look and feel, used mainly in the manufacture of curtains.

Consoltex stated that fabrics imported from countries with low labour costs, such as China, India and Pakistan, already have advantages over Canadian-made fabrics. Consoltex stated that the way for it to stay in business, as a “developed country” supplier, is to distinguish itself as a high-end product supplier, instead of trying to compete with offshore low-cost producers.

Notwithstanding the foregoing, Consoltex indicated that it could agree to a narrowing of the end use provision to bed sheet ensembles (flat sheets, fitted sheets and pillowcases), because it is an end use for which its fabrics are not used. In its submission of October 16, 2003, Consoltex reiterated its position that it does produce and sell fabrics, including fabrics weighing less than 100 g/m² and of a width exceeding 180 cm, for use in the manufacture of bedding products, such as comforters, duvet covers, pillow shams and bed skirts. Therefore, the only acceptable compromise for Consoltex would be duty-free entry on fabrics used in the production of flat sheets, fitted sheets and pillowcases.

DIFCO

DIFCO, of Magog, employs about 400 people in its vertically integrated facility for the production of woven fabrics. DIFCO indicated that it produces many fabrics, greige and bleached, using yarns of polyester, of cotton and of polyester/cotton blends, in weights ranging from 70 g/m² to 500 g/m² and in widths between 84 and 280 cm.

12. Of the 23 samples provided by Consoltex, the 4 fabrics made of various polyester/cotton blends were sent to the CCRA for laboratory analysis.

DIFCO opposed the request for tariff relief because it produces and supplies equivalent types of polyester and plain weave cotton fabrics, bleached or unbleached, of a weight not exceeding 170 g/m², for use in bedding and home furnishing products. In this connection, DIFCO provided three polyester/cotton fabric samples¹³ used in bedding and home furnishing products. DIFCO indicated that it can produce fabrics identical to the subject fabrics within 6 to 10 weeks from the receipt of an order and that no further investment would be required, as DIFCO has the necessary production equipment in place.

DIFCO indicated that the claim of benefits made by Brooks would be justifiable if the request for tariff relief were based solely on the weight, width and construction of the fabric sample (plain weave, 89 g/m², 241 cm wide, polyester/cotton, bleached) submitted by Brooks with its request and not on the basis of the broader description of the subject fabrics.

DIFCO stated that it is concerned that fabrics destined for other end uses would be imported duty free from offshore sources, in this weight category (not exceeding 170 g/m²) and in all combinations of polyester and cotton blends, and possibly 100 percent polyester. This, according to DIFCO, would be devastating for its business.

DIFCO indicated, however, that it would retract its opposition to the request for tariff relief if the weight of the subject fabrics were narrowed to “no more than 100 g/m²” and the width of the subject fabrics was limited to 183 cm or more. In its submission of October 15, 2003, DIFCO agreed to Brooks’s alternative wording for the description of the subject fabrics, but left the matter of the type of bedding products covered by tariff relief to all parties involved.

TSI

TSI is a manufacturer of greige fabrics for use in bedding and home furnishing products. TSI indicated that, under the aegis of Dominion Textile, its plant produced 70 percent polyester/30 percent cotton (70P/30C) fabrics¹⁴ until 1986, which were then replaced by “equivalent” fabrics of 50P/50C, which are preferred by customers.

TSI opposed the request for tariff relief because it considers the subject fabrics as “equivalent” to the 50P/50C fabrics¹⁵ that it manufactures. TSI stated that tariff relief would eliminate the production of these fabrics and adversely affect other fabrics that it manufactures.

TSI stated that, in the present market, the fact that a fabric is 70P/30C rather than 50P/50C makes no difference. According to TSI, the structure of the fabric (for example, 180 or 200 yarns per inch) rather than the polyester content is a more important element in a purchaser’s decision to buy a product.

TSI indicated that fabrics identical to or substitutable for the subject fabrics are available in North America, as U.S. textile mills produce and sell 70P/30C muslin¹⁶ fabrics upon request. TSI stated that, for a number of years, 50P/50C muslin fabrics and 70P/30C muslin fabrics have been used interchangeably and that the only reason why 70P/30C muslin fabrics have gained in importance is the lower selling prices, including duties, of the fabrics imported from countries with low labour costs. TSI stated that the subject fabrics originating in countries like China and Pakistan arrive in Canada at better prices when compared to

13. These samples were sent to the CCRA for laboratory analysis.

14. As per a telephone conversation with Tribunal staff on May 16, 2003.

15. TSI provided a sample of these fabrics, which was sent to the CCRA for laboratory analysis.

16. A broad term to describe a wide variety of plain weave cotton or polyester/cotton fabrics ranging from lightweight sheers to heavier shirting and sheeting.

domestic fabric prices. TSI indicated that, should tariff relief be granted, part of its operations would be jeopardized, because it could not compete.

In its submissions,¹⁷ TSI indicated that Brooks's request for tariff relief should be rejected on the basis that Brooks is substituting imported 65P/35C or 70P/30C fabrics for 50P/50C domestic fabrics for the same products and end uses and that these fabrics compete with one another. According to Brooks, there is complete fabric substitution in "bed in a bag" products and the price differential between a 50P/50C and a 65P/35C fabric is totally inconsequential. TSI submitted that Brooks's request for tariff relief seems to be driven by "bed in a bag" products, particularly exports, and that it is therefore not related to home furnishing products. TSI alleged that 70 percent of the subject fabrics would be used for "bed in a bag" products. TSI submitted that Brooks is eligible for duty drawback on the subject fabrics that are used in the manufacture of finished products exported to the United States. TSI also submitted that Sunshine produces identical polyester/cotton fabrics in Canada.

TSI submitted that a significant portion of its production of 50P/50C fabrics ceased during the last year because its major customer, Brooks, increasingly purchased its fabrics from Asian countries. TSI indicated that the prices of the subject fabrics from Pakistan are so low that a domestic supplier cannot compete on price alone, with or without duties. TSI submitted that there is no differentiation of fabrics (65P/35C or 50P/50C) in the low end of the "bed in a bag" market, since these fabrics co-exist and are interchangeable. According to TSI, the implication that 50P/50C or 52P/48C fabrics are in the high end of the market is unfounded.

TSI submitted that the Tribunal should reject suggestions by some parties that the scope of Brooks's request should be broadened or narrowed. Furthermore, TSI submitted that removing tariffs on polyester/cotton fabrics would simply encourage further substitution and price erosion, which would impact its precarious financial situation and result in the loss of extremely fragile domestic textile production.

Finally, on September 22 and 23, 2003, TSI made a "non-negotiable" proposal to resolve Brooks's request. TSI submitted that sheets and pillowcases are the most vital business to TSI and that tariff protection must be maintained on these products at all costs. It agreed to tariff relief for:

Plain woven fabrics, unbleached or bleached, containing 65 percent or more by weight of polyester fibres mixed solely with cotton, of a weight not exceeding 170 g/m², of subheading No. 5407.91 or 5513.11, to be dyed or printed, for use in the manufacture of the following bedding products: comforters, pillow shams, bed skirts and pillows.

Sunshine

Sunshine has been producing greige fabrics of 100 percent cotton and polyester/cotton blends for over one year at its facility located in Tracadie-Sheila, New Brunswick. Sunshine indicated that its fabrics are produced on state-of-the-art equipment and that all the processing of fabrics is done at its own facilities. Sunshine stated that these fabrics would be classified in subheading No. 5407.91 or 5513.11.

Sunshine opposed Brooks's request for tariff relief because Sunshine produces fabrics identical to or substitutable for the subject fabrics. In this regard, Sunshine provided six fabric samples¹⁸ that are being supplied to customers that use these fabrics in the manufacture of bedding and home furnishing products.

17. Submissions of June 25, August 15 and 22, and September 22 and 23, 2003.

18. These samples were sent to the CCRA for laboratory analysis.

Sunshine indicated that, should tariff relief be granted, it would be adversely affected, as it produces fabrics of the highest quality and sells them to a number of U.S. customers at very competitive prices. Sunshine stated that duty-free importations of the subject fabrics from countries with low labour costs would put its products at a disadvantage and might result in the loss of Canadian jobs. Sunshine indicated that it is a start-up company that provides employment to over 100 persons in a remote area.

In its submission of October 15, 2003, Sunshine stated that, while it currently produces a small amount of fabrics similar to the subject fabrics, this does not diminish or preclude the possibility that it may produce significant quantities of these fabrics in the near future. Sunshine submitted that it has the capability to produce various blends of polyester/cotton fabrics and that the removal of tariff barriers at the low end of the market would seriously jeopardize its ability to maximize its manufacturing capacity utilization.

OTHER INFORMATION

DFAIT informed the Tribunal that Canada currently maintains quota restraints on woven fabrics of polyester filament (category 35.0), imported from the Republic of Korea (Korea), Poland and Chinese Taipei. Accordingly, this coverage includes the subject fabrics of subheading No. 5407.91. Canada also maintains quota restraints on woven fabrics of polyester staple fibre/cotton (category 36.0), imported from China, Hong Kong, Korea and Chinese Taipei. Accordingly, this coverage includes the subject fabrics of subheading Nos. 5407.91 and 5513.11. No information was received from Industry Canada.

The CCRA indicated that there would be no additional costs, over and above those that it normally incurs, to administer the tariff relief 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.

In essence, Brooks, Baker, GIII and Lenrod claimed that there are no identical or substitutable fabrics available from Canadian textile production. In response to concerns raised by certain opposing parties, Brooks agreed to limit the weight, insert a width restriction and narrow the end-use provision to bedding products only. Consoltex indicated that the only acceptable compromise would be duty-free entry on fabrics used in the production of flat sheets, fitted sheets and pillowcases. DIFCO agreed to Brooks's alternative wording for the description of the subject fabrics, but left the matter of the type of bedding products covered by tariff relief to all parties involved. While being noncommittal with respect to the width and weight issues, TSI submitted that tariff protection must be maintained on sheets and pillowcases. Sunshine totally opposed the request for tariff relief.

As a basis for determining whether identical or substitutable fabrics are available from Canadian textile producers, the Tribunal used Brooks's revised description of the subject fabrics, which reads as follows:

Plain woven fabrics, unbleached or bleached, containing 65 percent or more by weight of polyester fibres mixed solely with cotton, of a weight not exceeding 100 g/m² and a width of 183 cm or

greater, of subheading No. 5407.91 or 5513.11, to be dyed or printed, for use in the manufacture of the following bedding products: comforters, duvets, sheets, pillowcases, pillow shams and bed skirts.

The Tribunal notes that DIFCO agreed to Brooks's revisions and no longer opposed the request for tariff relief.

In response to concerns raised by Consoltex, the Tribunal focussed its attention on the four fabric samples¹⁹ specifically identified by Consoltex as being for use in the manufacture of bedding products. Three of these fabrics (Mirella, Maximus and Maximus Floral) are made from 66 percent polyester and 34 percent rayon, while the Kojo Stripe fabric is made from 100 percent polyester. None of the four fabrics has any cotton content. Therefore, these fabrics do not conform to the definition of the subject fabrics. In the past, the Tribunal has stated that, in order for fabrics to be fully substitutable, the technical composition and description must generally be in the same category. Moreover, the Tribunal notes that the landed cost of the subject fabrics²⁰ from Pakistan is currently significantly lower than the domestic selling price of \$3.25 to \$3.90/m² of Consoltex's bedding fabrics,²¹ even with the full application of duties. Consequently, the Tribunal is persuaded that, even in the absence of tariff relief, Brooks would not shift its purchases of the lower-priced subject fabrics to the higher-priced fabrics offered by Consoltex. Hence, Consoltex is not likely to lose sales if tariff relief is granted. In any event, Consoltex's bedding fabrics do not represent a significant portion of its total sales in the bedding and home furnishing sector and most of these sales are in the export market.²² Therefore, the Tribunal is of the view that any potential risk to Consoltex will be minimal.

Turning to the fabric samples provided by Sunshine, the Tribunal notes that, based on the analysis carried out by the CCRA, they do not conform to the definition of the subject fabrics, in that they do not contain 65 percent or more of polyester fibres. However, slight changes in the composition of some of these fabrics would result in them falling within the scope of the definition of the subject fabrics. Furthermore, the Tribunal accepts the evidence that indicates that certain 50P/50C fabrics are substitutable for the subject fabrics for the uses in question. This leads the Tribunal to believe that Sunshine has some capability of producing a substitutable product. On the other hand, Sunshine has only recently started operations and has established a customer base in the United States. It has not provided any evidence, in this case, to support a conclusion of imminent production or potential to supply commercial quantities of fabrics in the Canadian marketplace that would be acceptable to Brooks and other potential buyers. 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, in the foreseeable future, to supply identical or substitutable fabrics to Brooks and other potential buyers.

As noted above, TSI made a proposal to resolve Brooks's request, but argued that protection must be maintained on sheets and pillowcases, as these products are its most vital business. The issues of width and weight were not of great concern to TSI. The Tribunal finds that TSI has provided sufficient evidence to demonstrate that its production of 50P/50C fabrics that are used in the manufacture of sheets or pillowcases could be at risk, should tariff relief be granted. In this regard, Brooks stated that it would be willing to accept a final product description that excluded sheets from the end-use provision. Moreover, Brooks indicated that some components of a "bed in a bag" product, normally the sheets and pillowcases, are made from

19. Mirella, Physical Exhibit TR-2002-006-11.3U; Maximus, Physical Exhibit TR-2002-006-11.3V; Maximus Floral, Physical Exhibit TR-2002-006-11.3W; Kojo Stripe, Physical Exhibit TR-2002-006-11.3Z.

20. *Protected Staff Report*, Tribunal Exhibit TR-2002-006-20 (protected), Administrative Record, Vol. 2 at 24.

21. Tribunal Exhibit TR-2002-006-11.3X, Administrative Record, Vol. 3 at 92.

22. Tribunal Exhibit TR-2002-006-12.3 (protected), Administrative Record, Vol. 4 at 44-45.

50P/50C.²³ Brooks indicated that it does not currently use the subject fabrics to make sheets and pillowcases and did not provide any projections as to when or in what volume it might start using the subject fabrics for this purpose. Given that TSI has the ability to supply 50P/50C fabrics and has shown, to the Tribunal's satisfaction, that it currently supplies such fabrics to the Canadian market, the Tribunal is of the view that tariff relief should be provided for the subject fabrics on the basis of the revised description proposed by Brooks, except for use in the manufacture of sheets and pillowcases. The Tribunal notes that TSI made a serious effort to accommodate Brooks's request and that Brooks also compromised, acknowledging TSI's need to protect its sheet business from tariff relief.

On the basis of the information provided to the Tribunal, tariff relief would provide yearly benefits of approximately \$1 million to Brooks and other users of the subject fabrics. In addition, tariff relief would provide benefits to Brooks and other users in the form of reduced costs, which would enable them to better position themselves vis-à-vis imports of finished goods from Bangladesh, China, India and Pakistan. Tariff relief could also translate into benefits to the consumer in terms of lower prices. 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 as re-defined. In summary, the Tribunal finds that the tariff relief requested by Brooks would provide net economic gains to Canada.

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, unbleached or bleached, containing 65 percent or more by weight of polyester fibres mixed solely with cotton, of a weight not exceeding 100 g/m² and a width of 183 cm or greater, of subheading No. 5407.91 or 5513.11, to be dyed or printed, for use in the manufacture of the following bedding products: comforters, duvets, pillow shams and bed skirts.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Ellen Fry
Ellen Fry
Member

23. Tribunal Exhibit TR-2002-006-26.1 , Administrative Record, Vol. 5 at 34.