



**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
SUNSOAKERS INC.  
REGARDING  
C-TEX AND C-TEX “SPORT” FABRICS**

**JANUARY 17, 1996**

**SUNSOAKERS INC.**

**REQUEST NO.: TR-94-020**

**Request No. : TR-94-020**

Tribunal Members:	Anthony T. Eyton, Presiding Member Robert C. Coates, Q.C., Member Lyle M. Russell, Member
Research Director:	Marcel J.W. Brazeau
Research Manager:	John Gibberd
Counsel for the Tribunal:	Shelley Rowe
Registration and Distribution Officer:	Claudette Friesen

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 reference from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.<sup>1</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.

Pursuant to the Minister's reference, on March 30, 1995, the Tribunal received a request from Sunsoakers Inc. (Sunsoakers) of Calgary, Alberta, for the permanent removal of the customs duty on importations, from all countries, of C-Text and C-Text "Sport" fabrics for use in the production of sun-protective clothing (the subject fabrics).

The terms of reference direct the Tribunal to "examine any properly documented request that it receives from a domestic producer for tariff relief on textile inputs used in its downstream manufacturing activities." In its request for tariff relief, Sunsoakers indicates that it subcontracts the manufacture of its sun-protective clothing to Typhoon Sportswear Ltd. (Typhoon) of Calgary. To satisfy itself that Sunsoakers had standing to file a request for tariff relief in accordance with the terms of reference, by letter dated May 4, 1995, the Tribunal requested information concerning Sunsoakers' relationship with Typhoon. Sunsoakers provided two contract manufacturing agreements into which it entered with Typhoon for the manufacture of C-Shirt and C-Shirt "Sport" garments. The Tribunal was satisfied, based on the information before it, that Sunsoakers had standing to file a request for tariff relief.

On June 9, 1995, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation, which was widely distributed and published in the June 17, 1995, edition of the Canada Gazette, Part I.<sup>2</sup>

On June 15, 1995, the Canadian Textiles Institute (CTI) requested that the investigation be terminated, claiming that Sunsoakers lacked standing as a manufacturer and failed to define adequately the scope of the request and to fulfil the requirements of Form A, as set out in the Textile Reference Guidelines. In response to the CTI's request, the Tribunal indicated that it was satisfied that the requirements of Form A had been met and that it had requested that Sunsoakers provide a more detailed description of the subject fabrics. In response to the Tribunal's request, Sunsoakers authorized the release of information from the Department of National Revenue's (Revenue Canada) analysis of the subject fabrics and specified that the description of the subject fabrics states that they have a consistent sun protection factor (SPF) of greater than 100, whether wet or dry.

On August 29, 1995, the Tribunal issued a notice of amendment to the notice of commencement of investigation that set out the following detailed description of the subject fabrics: C-Text warp knitted fabrics, containing by weight 89 percent of nylon filament yarn and 11 percent of elastomeric yarn and weighing

---

1. R.S.C. 1985, c. 47 (4th Supp).

2. Vol. 129, No. 24 at 1957.

231 g/m<sup>2</sup>, and C-Tex “Sport” weft knitted fabrics, containing by weight 90 percent of polycotton yarn and 10 percent of elastomeric yarn and weighing 213 g/m<sup>2</sup>, and both fabrics described by Sunsoakers as having a consistent SPF of greater than 100, whether wet or dry. The notice of amendment also indicated that the subject fabrics are classified by Revenue Canada under tariff item No. 6002.30.90 of Schedule I to the *Customs Tariff*.<sup>3</sup> The original notice indicated that the C-Tex “Sport” fabric was classified under a different tariff item. The notice of amendment was distributed to potential domestic producers of the subject fabrics and to producers of sun-protective clothing and published in the September 9, 1995, edition of the Canada Gazette, Part I.<sup>4</sup>

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. Also, questionnaires were sent to potential producers of sun-protective clothing that compete with Sunsoakers. A letter was sent to Revenue Canada to request information on the tariff classification of the subject fabrics, and samples were provided for laboratory analysis. A letter was also sent to the Department of Foreign Affairs and International Trade to request information on any quantitative import restrictions on the subject fabrics. As well, the departments of Industry and Finance were informed of the request. Finally, letters were sent to the Canadian Apparel Federation, the CTI, the Canadian Society of Customs Brokers and the Canadian Importers Association Inc. to inform them of the commencement of the investigation.

On October 19, 1995, the Tribunal’s exhibits, including the staff investigation report, were distributed to those parties that had filed a notice of appearance. The parties to the investigation are: (1) Sunsoakers, the requester; (2) the CTI, the textiles industry association; (3) Sunveil Sunwear Inc. (Sunveil) of Burlington, Ontario, a producer of sun-protective clothing; (4) Total Eclipse Activewear Inc. (Total Eclipse) of Hamilton, Ontario, a seller of sun-protective clothing manufactured in Hong Kong; (5) Nalpac of Montréal, Quebec, a domestic producer of knitted fabrics; (5) Stingray Bay Surf Wear Limited (Stingray Bay) of Bracebridge, Ontario, a seller of sun-protective clothing made in Hong Kong; and (7) Agmont Inc. (Agmont) of Montréal, a domestic producer of knitted fabrics.

The CTI filed a submission with the Tribunal, to which Sunsoakers filed a response. A public hearing was not held for this investigation.

### **PRODUCT INFORMATION**

The products covered by the request are C-Tex and C-Tex “Sport” fabrics having a consistent SPF of greater than 100, whether wet or dry, for use in the production of sun-protective clothing. Revenue Canada’s laboratory analysis indicated that the C-Tex fabric is a warp knitted fabric containing by weight 89 percent of nylon filament yarns and 11 percent of elastomeric yarns and has a weight of 231 g/m<sup>2</sup>. The analysis also showed that the C-Tex “Sport” fabric is a weft knitted fabric containing by weight 90 percent of polycotton yarns and 10 percent of elastomeric yarns and has a weight of 213 g/m<sup>2</sup>.

---

3. R.S.C. 1985, c. 41 (3rd Supp.).

4. *Supra*, note 2, No. 36 at 3157.

The subject fabrics are produced by C-Shirts Pty Ltd., an Australian company, and are designed to provide the maximum protection from ultraviolet radiation in a lightweight and cool summer fabric. Tests conducted by Unisearch of Australia indicate that the subject fabrics provide an SPF of greater than 100, whether wet or dry. C-Shirts Pty Ltd. developed and researched the subject fabrics through the Department of Textile Technology of the University of New South Wales.

Revenue Canada indicated that the subject fabrics are classified for customs purposes under tariff item No. 6002.30.90. This tariff item covers knitted and crocheted fabrics of a width greater than 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread. Revenue Canada also advised the Tribunal that the subject fabrics are dutiable at 20.5 percent *ad valorem* under the MFN tariff; at 7.5 percent *ad valorem* under the U.S. tariff; and at 20.0 percent *ad valorem* under the Mexico tariff.

In August 1993, Sunsoakers entered into an agreement with C-Shirts Pty Ltd. to market imports of sun-protective clothing made from the subject fabrics. In an attempt to reduce the wholesale prices, Sunsoakers decided to manufacture sun-protective clothing in Canada. To this end, Sunsoakers entered into a licensing arrangement with C-Shirts Pty Ltd., in April 1994, to be the exclusive Canadian importer of the subject fabrics. Sunsoakers' production includes both children's and adult clothing in the form of hats, golf shirts, shorts and beachwear. Sunsoakers has, in the past, subcontracted the manufacture of its sun-protective clothing to Typhoon. Sunsoakers states that it is also considering possibilities for the production of sun-protective clothing with other manufacturers. At the time that the request was submitted, Sunsoakers had planned to significantly increase its imports of the subject fabrics and to continue to manufacture sun-protective clothing from the subject fabrics in Canada. To date, Sunsoakers has only imported a small volume of the subject fabrics.

Samples submitted to the Tribunal were not tested for their ability to block ultraviolet radiation, as Revenue Canada does not have the necessary equipment to verify the SPF of a fabric.

There are Canadian laboratories that perform SPF tests on fabrics; however, there is no generally accepted standard methodology for measuring the ability of fabrics to protect human skin from the effects of ultraviolet radiation. Further, there are no recognized Canadian standards for minimum levels of protection from ultraviolet radiation for sun-protective fabrics.<sup>5</sup> The term "SPF," when used in conjunction with fabrics, may have a different meaning depending on the type of test used. Some garment makers do not use an SPF rating, but instead state that the fabric in their garments blocks a specified percentage of the sun's rays.

Australians appear to be in the forefront of the development of sun protection technology because of concern over a high and increasing incidence of skin cancer. This includes the development of sun-protective fabrics, as well as the testing of fabrics.

---

5. The Canadian Dermatology Association, as yet, has not recommended a minimum level of sun protection for clothing.

---

## REPRESENTATIONS

**Sunsoakers** alleges that fabrics with sun protection characteristics equivalent to those of the subject fabrics are not produced in Canada. The subject fabrics are cool, lightweight fabrics that consistently provide greater protection from ultraviolet radiation than do similar cool, lightweight fabrics and are guaranteed to do so. No other fabrics in the world, including those made by participants in this investigation, are able to provide such protection and be guaranteed to do so. The primary end use of the subject fabrics is to provide protection from ultraviolet radiation. The subject fabrics are not meant to compete with regular fabrics. Heavyweight denim may provide similar protection from ultraviolet radiation, but it is uncomfortable in the heat or when wet, and lightweight cotton T-shirts are cool, but they allow harmful penetration of ultraviolet radiation. Both the denim and cotton garments are, however, safe and comfortable for regular daily use.

Sunsoakers claims that the subject fabrics have a durability protocol that has met with the acceptance of the U.S. Food and Drug Administration. Sunsoakers states that every run of every colour of the subject fabrics is SPF tested using the methodology most accepted by international textile technology and dermatology communities. The subject fabrics exceed their claimed SPF of 100, whether wet or dry, in all colours. Sunsoakers notes that none of the other fabrics in this investigation make this claim. No documentation was provided to indicate that the other fabrics had an SPF of greater than 100 when wet tested, that all runs and colours of the fabrics were SPF tested as a standard and that a guarantee and acceptance of liability were given for the claimed SPF.

Sunsoakers argues that the CTI may be unable to perceive the need for rating fabrics with their level of protection from ultraviolet radiation, but the Canadian Dermatology Association (CDA) perceives the need. The CTI claims that people participate in summer sports wearing clothing made from market-accepted fabrics. The CDA, on the other hand, acknowledges that there are fabrics available in Canada that block ultraviolet radiation, but claims that they are not suited to the light sportswear that is likely to be worn by adults and children at risk.

Sunsoakers points out that sun-protective fabrics are part of a new industry of products, that they are for preventive medical purposes and that they are recognized by the medical community as necessary during high-risk situations. Sunsoakers points to the CTI's observation that Australia and Canada differ greatly in latitude, intensity of sunlight and length of season for which the subject fabrics were designed and questions how well-informed the Canadian textile industry is regarding ultraviolet radiation levels pertaining to Canadian health. Skin damage caused by ultraviolet radiation is a well-documented risk in Canada, and daily ultraviolet indexes are broadcast across Canada. Protecting skin in peak periods of ultraviolet exposure is as necessary in Canada as it is in Australia. The CDA foresees more guidelines for textiles as medical devices, as was the case when sunscreens entered the market. The subject fabrics are creating a new market that does not threaten current markets. The tariff on the subject fabrics only increases the price to the user and provides no benefits.

Sunsoakers accepts that it is small, but states that this is no reason to deny it tariff relief. It will grow and would like to have a domestic producer licensed to make the subject fabrics. Canadian producers have indicated, however, that this could only happen when volumes increased to a point to make it worthwhile.

Sunsoakers also acknowledges that import volumes of the subject fabrics have been small. Tariff relief will make importing the subject fabrics more viable, and Canadian production of sun-protective clothing will be possible. The resulting reduction in wholesale garment prices should increase sales, leading to the participation of Canadian manufacturers in the production of the subject fabrics.

**Sunveil** produces sun-protective apparel from an imported woven 100 percent polyester fabric that has been impregnated with ultraviolet inhibitors. The fabric has the appearance of a mesh, and the garments made from it may be worn on their own or over other clothing. Although Sunveil did not indicate the level of sun protection offered by the woven fabric, it considers the fabric to be substitutable for the subject fabrics.

Sunveil supports the request on the condition that tariff relief also be granted on the fabric that it imports, so as to not give an unfair competitive advantage to Sunsoakers. Sunveil claims that there are no Canadian manufacturers of sun-protective fabrics. Sunveil's competitiveness in the U.S. market has been hampered by continuing high rates of duty on clothing under NAFTA. There is going to be even greater competition from both Canadian and U.S. manufacturers in the rapidly expanding North American market for sun-protective clothing, and Canadian producers will be at a serious disadvantage in this market if tariff relief is not granted.

**Agmont** claims that it currently produces and sells a fabric having characteristics that are identical to those of the C-Tex "Sport" fabric. This fabric is used in the manufacture of active wear, swimwear and ready-to-wear clothing. A laboratory test conducted for Agmont indicates that its fabric has an SPF of greater than 100.

Agmont sees no need to grant the requested tariff relief because it produces a fabric having characteristics that are identical to those of the C-Tex "Sport" fabric. It claims that it can make any required improvement to its fabric and can undertake special processes to increase the fabric's ability to block ultraviolet radiation. Agmont further states that its fabric is more uniform than that of Sunsoakers.

**Doubletex Inc.** (Doubletex) is a domestic converter that coats fabrics to give them a high SPF, but those fabrics do not have the same fibre content or construction as the subject fabrics. Doubletex submits that substitutability should not be determined by a particular sun protection process, as fabrics produced by other processes compete with the subject fabrics.

Based on Sunsoakers' claim that the subject fabrics are high-tech and thus expensive, Doubletex suggests restricting the request to a specific price point range so as to limit the possibility of substitution and damage to textile production. Doubletex also submits that, if the subject fabrics are made only in Australia, it makes sense to limit the application just to the subject fabrics.

**Nalpac** is a major producer of knitted cotton Lycra and nylon Lycra fabrics for use in the production of lingerie and sportswear and exports a significant percentage of its production. Nalpac claims that substitutable fabrics can be supplied by many Canadian manufacturers. It states that all fabrics provide protection from ultraviolet radiation and that the protection varies according to fabric colour, construction, fibre content and weight. This protection can be enhanced by modifying these characteristics and by the

application of special treatments such as Rayosan. Nalpac believes that Rayosan, the use of which was licensed to Clariant Chemicals by its Australian developers and which was only recently made available in Canada, will expand the range of sun-protective fabrics available in the Canadian market.

Tests conducted on a number of samples of three types of fabrics produced by Nalpac in a variety of colours and finishes indicated that the SPF of the fabrics ranged from 15 to more than 50 for the black sample of each fabric type. One of the three fabric types is claimed to be substitutable for the C-Text fabric and another substitutable for the C-Text "Sport" fabric. Nalpac has sold these fabrics in Canada and submits that the SPF of the fabrics can be increased with Rayosan.

Nalpac claims that granting tariff relief to Sunsoakers will adversely affect its sales and undermine its ability to market fabrics treated with Rayosan. Nalpac believes that Sunsoakers has not adequately explored purchasing from domestic producers and that the availability of Rayosan for use in the production of sun-protective fabrics dates the claim that there are no domestic or foreign substitutes. Nalpac alleges that, if tariff relief is granted, it will be next to impossible to monitor imports. Other fabrics imported under the same tariff item will benefit from the tariff relief, and these imports will jeopardize Nalpac's domestic and export markets.

**LaGran Canada Inc.** is currently expanding its product line to include elastomeric yarns. At this point in time, it is not in a position to oppose the request for tariff relief. Within a year, however, it will be able to quote on the subject fabrics.

**Consoltex Inc.** (Consoltex) sells products in the United States through sales agents and/or Seatex, a division of The Balson-Hercules Group Ltd., a U.S. company acquired in 1992 to take advantage of the FTA and NAFTA. Seatex introduced SOLARWEAVE<sup>®</sup>, a sun-protective fabric, to the U.S. market in 1993, and the fabric is now sold in Canada by Consoltex. SOLARWEAVE<sup>®</sup> is a woven 100 percent nylon filament fabric that is treated with ultraviolet inhibitors and is made for use in the manufacture of outdoor sportswear and work clothing. It has been tested by independent laboratories in order to qualify it as a medical device under the U.S. Food and Drug Administration regulations. These tests indicated that SOLARWEAVE<sup>®</sup> blocks 98 percent of ultraviolet rays when new and dry, 96 percent of the rays when new and wet, and 95 percent of the rays after extended use. The fabric qualifies for NAFTA treatment.

Consoltex opposes the request for tariff relief, arguing that substitutable fabrics are produced and sold in the NAFTA region. Consoltex now offers SOLARWEAVE<sup>®</sup> to Canadian manufacturers at competitive prices. The FTA and NAFTA were designed to provide manufacturers in North America preferential and, ultimately, barrier-free access to each other's markets. Tariff advantages granted to non-NAFTA parties undermine the benefits of NAFTA to Consoltex as a North American manufacturer.

**Stingray Bay** imports and sells children's sun-protective swimwear made in Hong Kong and plans to add other items to its product line. The swimwear is made from a nylon Lycra fabric that is slightly thinner than the C-Text fabric, but whose use allows wholesale prices to remain at an acceptable level. Stingray Bay claims that its swimwear blocks up to 99 percent of the sun's rays.



Stingray Bay opposes the request for tariff relief and claims that Canadian companies are developing new sun-protective fabrics and fabric treatments. Also, there are Canadian companies making fabrics that provide sun protection, but these are not yet marketed as sun-protective fabrics. Stingray Bay claims that the sun-protective clothing industry is in its infancy and has significant potential, and it would like to see the industry become a made-in-Canada industry which uses made-in-Canada fabrics. Stingray Bay wants to produce clothing in Canada using domestic fabrics when orders reach a viable volume. It believes that, until a Canadian industry is established, it would be unfair to grant tariff relief to Sunsoakers just because it cannot compete with other companies' price points.

**Total Eclipse** imports and sells sun-protective clothing made from Micro Span, a 100 percent polyester, micro-fibre knit fabric. Total Eclipse believes that Micro Span is substitutable for the subject fabrics. It advertises its garments as having a minimum SPF of 25. Total Eclipse opposes the request for tariff relief and states that there are knitting mills in Canada that have the equipment necessary to produce sun-protective fabrics. Total Eclipse claims that tariff relief will drastically affect its competitive market position.

The **CTI** opposes Sunsoakers' request for tariff relief. The CTI states that Agmont, Doubletex, Nalpac and Consoltex, all members of the CTI, oppose the request. The CTI notes that Stingray Bay claims that its swimwear competes with that of Sunsoakers and recalls Stingray Bay's observation that the sun-protective clothing industry is in its infancy and that it would like to see the industry become a made-in-Canada industry which uses domestic fabrics. The CTI states that Sunveil's conditional support makes the point that woven fabrics compete with knitted fabrics and that there are other sun protection enhancing processes already on the market. The CTI notes that Sunsoakers does not own or operate any production facilities and that garments made in Canada appear all to have been produced by apparel contractors and not by Sunsoakers.

The garments imported by Sunsoakers have not demonstrated any significant ability to compete in the Canadian market, and there is no evidence that the clothing made in Canada is competitive. A statutory tariff should not be threatened just because a company has difficulty achieving the prices required for market acceptance. The fact that Statistics Canada data show a low volume of imports of crocheted and knitted fabrics from Australia supports the thesis that the subject fabrics from Australia cost more than the market will bear. Given that Canada differs from Australia in latitude, intensity of sunlight and length of season for which the subject fabrics were designed, it is not surprising that the subject fabrics have not met with quick and significant commercial success in Canada.

The CTI states that the subject fabrics are knitted fabrics and that Canadian knitters are proficient and competitive and have succeeded in maintaining strong market share in Canada and the United States. The Canadian industry has the capability to produce sun-protective fabrics through a number of processes and, yet, is prohibited from producing the exclusive fabrics on which the request is based. Knitters would undoubtedly seek to use the C-Text technology if the subject fabrics were perceived to be competitive in the marketplace. However, if tariff relief is granted, the owner of the technology will never have an incentive to license it to Canadian producers. On the other hand, if the C-Text technology does not add value at a duty-paid cost that Canadian users, retailers and consumers accept, there is no need to grant tariff relief.

In response to Sunsoakers' claim that there are no acceptable substitutes, the CTI states that people currently participate in summer sports wearing clothing made from market-accepted fabrics. The CTI also submits that there is no evidence that tariff relief will produce the increase in sales claimed by Sunsoakers and that, if such sales are realized, there will be a commensurate displacement of sales and employment of other domestic fabric producers.

It was submitted by the CTI that there is no universally accepted methodology for testing the SPF of fabrics and that there is no standard method for rating fabrics. Revenue Canada does not have the equipment to test the SPF of fabrics. If the SPF is not verifiable, there is no guarantee that fabrics meeting the other characteristics of the subject fabrics will not be imported duty-free. These fabrics would compete with fabrics available from domestic production. In the absence of an SPF standard and a universally recognized testing procedure, it will not be possible to administer a tariff relief provision for the subject fabrics on a cost-effective basis.

The Tribunal suggested in its letter of June 15, 1995, that the CTI might wish to address the subject of standing after reviewing the Tribunal's exhibits. The CTI considers it a matter of importance that the industry does not have to react to requests that are frivolous. The CTI takes this position because an investigation threatens producers with unexpected loss of statutory tariff protection, imposes the need on the industry to defend its operations against the threat of tariff preferences for foreign producers, imposes costs on the domestic industry in terms of time and money needed to defend its position, and imposes unquantifiable costs on the industry flowing from the perceived changes in the reliability of the statutory tariff.

The CTI believes there should be a minimum threshold, such as the size of a requester relative to the market for the textile inputs and the standing of a requester in terms of industry experience, sales, production, capital invested and people employed. The CTI does not have a specific proposal at this time, but does say that it is difficult to conceive of any suitable threshold that would justify the commencement of an investigation where a requester accounts for less than 1 percent of the end product market, has no production workers on its payroll, has been engaged in the relevant manufacturing sector for less than two years, and based its request on product characteristics for which there are no Canadian standards and which are not self-evident to customs officers or verifiable by Revenue Canada's laboratory.

The **Department of Foreign Affairs and International Trade** informed the Tribunal that Canada does not maintain quota restraints on fabrics classified under tariff item No. 6002.30.90. As a consequence, there are no quantitative import restrictions on the subject fabrics.

Fabrics imported under that tariff item are included in the Import Control List.<sup>6</sup> As a result, Canadian importers of fabrics classified under that tariff item must apply for an import permit.

---

6. However, fabrics classified under tariff item No. 6002.30.90 originating in the United States or Mexico are not included in the Import Control List.

**The Department of Industry** indicated that it is not aware of any Canadian producers of fabrics that are knitted to the specifications concerning the protection from ultraviolet radiation as indicated by Sunsoakers. However, it noted that approximately 90 percent of domestic knitters make both single-knit and double-knit fabrics.

**Revenue Canada** indicated that its laboratory would have to contract out the SPF testing of fabrics to a facility which has the capability to do the tests. The cost of doing so has yet to be determined. Therefore, additional funding may be required to administer tariff relief if granted, depending on the wording of the tariff relief provision.

Revenue Canada also suggested that a more appropriate wording for the description of the C-Text “Sport” fabric would be:

*weft knit fabric, containing 90 percent by weight of a mixture of polyester and cotton fibres, and 10 percent by weight of elastomeric yarns and weighing 213 g/m<sup>2</sup>.*

As well, Revenue Canada indicated that customs officials lack the expertise in the field of what constitutes sun-protective clothing, with the result that they may not be able to verify the end use of the fabrics. Revenue Canada suggested that any favourable recommendations to the Minister should not be as specific as to say “for use in the production of sun-protective clothing,” but rather should say “for use in the manufacture of apparel.”

## **ANALYSIS**

The Tribunal has reviewed the information before it in this investigation and concludes that Agmont knits a fabric that is identical to the C-Text “Sport” fabric in terms of fibre content and construction. The Tribunal also finds that Nalpac knits fabrics that, while not identical, are sold for use in manufacturing types of clothing that are similar to those made from the subject fabrics.

There is also the question of how the fabrics compare in terms of their sun protection capabilities. Agmont submitted test results for its fabric, showing that the fabric had an SPF of greater than 100. Nalpac also supplied test results, indicating that the SPF of its fabrics ranged from 15 to more than 50. As well, Nalpac stated that the SPF of its fabrics could be enhanced by treating the fabrics with Rayosan.

The Tribunal notes that there is no generally accepted testing methodology for measuring the SPF of fabrics. The Tribunal is not in a position to determine whether the SPF results obtained for the domestic fabrics are equivalent to those for the subject fabrics. Even if the SPFs are not equivalent, the Tribunal would want to consider whether the marketplace views the fabrics as being substitutable in terms of their sun protection capability. An important consideration in such deliberations would be Canadian standards for minimum levels of protection from ultraviolet radiation for sun-protective fabrics. There are, however, no such standards in Canada. As a result, in determining whether domestically produced fabrics are substitutable for the subject fabrics, the Tribunal gave considerably more weight to the fibre content and construction of the subject fabrics than to the SPF.

Emphasis on SPF ratings appears to be a relatively recent innovation in the production and marketing of sun-protective clothing. As the market for such clothing is evolving rapidly, it is difficult to judge the substitutability of one product for another. Nevertheless, in the present case, the Tribunal is of the view that, on balance, the information provided indicates a fair degree of substitutability between the subject fabrics and fabrics offered by Agmont and Nalpac.

The Minister's terms of reference state that recommendations for tariff relief must be administrable on a cost-effective basis. The Tribunal notes that Revenue Canada does not have the equipment to test the SPF of fabrics and that it would have to use the services of outside laboratories. This would impose a cost. Furthermore, in the absence of a generally accepted testing methodology, there is the question of which test or tests Revenue Canada would ask the laboratories to perform.

In light of the foregoing, the Tribunal finds that granting the requested tariff relief would not maximize net economic gains for Canada. The Tribunal, therefore, concludes that tariff relief should not be granted.

The Tribunal would also like to make note of its concerns regarding Sunsoakers' standing as a producer. Sunsoakers submitted evidence that it was subcontracting its production to another company and, on this basis, the Tribunal concluded that Sunsoakers had standing to file its request for tariff relief. However, subsequent to the commencement of the investigation, decisions made by Sunsoakers raised questions about its continued level of commitment to produce sun-protective clothing made from the subject fabrics.

### **RECOMMENDATION**

The Tribunal, therefore, recommends to the Minister that tariff relief not be granted on imports of C-Tex and C-Tex "Sport" fabrics for use in the manufacture of apparel.

Anthony T. Eyton  
Anthony T. Eyton  
Presiding Member

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Member

Lyle M. Russell  
Lyle M. Russell  
Member