



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

REPORT TO THE MINISTER OF FINANCE

**REQUEST FOR TARIFF RELIEF BY
TRIBAL SPORTSWEAR INC.
REGARDING
CERTAIN WOVEN FABRICS OF
POLYESTER/RAYON/ELASTOMERIC MONOFILAMENT**

OCTOBER 20, 2003

TRIBAL SPORTSWEAR INC.

REQUEST NO. TR-2002-008

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INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference¹ from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.² The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

On December 23, 2002, pursuant to the Minister's reference, the Tribunal received a request from Tribal Sportswear Inc. (Tribal), of Montréal, Quebec, for the immediate removal, for an indeterminate period of time, of the customs duty on importations from all countries, of certain woven fabrics of polyester/rayon/elastomeric monofilament, for use in the manufacture of women's jackets, blazers, skirts, pants and shorts.

On March 12, 2003, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,³ which was distributed to known interested parties. The fabrics under investigation were described in the notice as "woven fabrics, containing 60 percent or more by weight of polyester staple fibres, 30 percent or more by weight of rayon staple fibres, mixed with 10 percent or less by weight of elastomeric monofilament, constructed in both the warp and the weft of 2-ply yarns that are plied with an elastomeric monofilament, of subheading No. 5515.11, for use in the manufacture of women's jackets, blazers, skirts, pants and shorts" (the subject fabrics).

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. A request for information was also sent to potential users and importers of the subject fabrics. A letter was sent to the Canada Customs and Revenue Agency (CCRA) requesting a complete description of the physical characteristics of the sample submitted by Tribal, an opinion on whether the requested tariff relief would be administrable and suggested wording to describe the subject fabrics, should tariff relief be recommended. Letters were also sent to the Department of Foreign Affairs and International Trade (DFAIT) and the Department of Industry (Industry Canada) requesting information that could assist the Tribunal in its investigation.

A staff investigation report summarizing the information received from the CCRA and DFAIT, Tribal, 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 and an exchange of communications, Tribal and Consoltex Inc. (Consoltex) reached an agreement to narrow the scope of Tribal's request for tariff relief.

On June 13, 2003, the Tribunal requested comments from the CCRA as to the administrability of the proposed revised description of the subject fabrics. Tribal and Consoltex commented on the CCRA's reply, which was received on July 15, 2003.

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

1. The terms of reference were last modified on July 4, 2002.
2. R.S.C. 1985 (4th Supp.), c. 47.
3. C. Gaz. 2003.I.791.

PRODUCT INFORMATION

Although the request for tariff relief covers fabrics imported from all countries, Tribal imports the subject fabrics from the People's Republic of China (China) and Turkey. The sample submitted with Tribal's request for tariff relief was a dyed, three-thread twill,⁴ woven fabric, made of 64 percent polyester, 31 percent rayon and 5 percent elastomeric monofilament (spandex). Both the warp and the weft contained 2-ply staple fibre yarns, plied with an elastomeric monofilament. The decitex⁵ was 177 per single yarn in the warp and 172 per single yarn in the weft. The fabric weighed 300 g/m².

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

As of January 1, 2003, the subject fabrics, classified for customs purposes under classification No. 5515.11.90.00 of the schedule to the *Customs Tariff*,⁶ are dutiable at 15 percent *ad valorem* under the 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. The MFN Tariff will be reduced to 14 percent *ad valorem* on January 1, 2004.

REPRESENTATIONS

Clothing Industry

Tribal

Tribal has been manufacturing women's sportswear, including pants, jackets, tops and suits since 1970. In its request for tariff relief, Tribal claimed that there are no domestic textile manufacturers that make or have the ability to make fabrics that have, both in the warp and the weft, 2-ply fibre yarns that are plied with an elastomeric monofilament, which gives the fabric its two-way stretch capability. According to Tribal, this makes the fabrics unique and very different from any fabric available from domestic textile manufacturers. In addition, the fabrics are very easy to use in the manufacturing processes.

Tribal stated that the women's fashion industry is moving towards greater use of stretch fabrics that are of high quality and available in fashionable colours. Tribal stated that it can create garments with stretch fabrics that are stylish, have a good fit and can be worn comfortably during the workday, including while travelling on business. Tribal also indicated that garments made with the subject fabrics are easy to care for, which is another important aspect of today's women's fashion industry, especially for women in the workforce. Tribal indicated that the women's fashion industry changes rapidly and that, in order to exploit current trends, it needs to move quickly. According to Tribal, it must be able to obtain the subject fabrics in the quantities needed with short lead times and at competitive prices. Tribal indicated that textile mills in

4. "Twill" is a weave characterized by a diagonal rib, or twill line, generally running upward from left to right.

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.

China and Turkey are very large-scale operations and are very responsive to its needs in terms of quality, quantity, delivery times and pricing.

Tribal stated that it must compete with imports of finished garments made with the subject fabrics and that such imports, primarily from the Orient, are able to outsell Tribal if it does not have similar or equivalent garments made with the subject fabrics. Tribal also stated that, as of January 1, 2003, the Least Developed Countries (LDCs) are able to export garments made with such fabrics to Canada, duty free and quota free.

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

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

With respect to Consoltex's opposition to the request for tariff relief, Tribal submitted that none of the sample fabrics provided by Consoltex⁷ is identical to or substitutable for the subject fabrics, since they lack the requisite construction and two-way characteristics that are essential to meet the demands of the fashion market. Tribal indicated that, of the Consoltex samples, only two, i.e. Omni and Parker, contain rayon, polyester and an elastomeric monofilament, and purport to have stretch in both the warp and the weft. However, Tribal stated that these fabrics do not fall within the description of the subject fabrics because, *inter alia*, they are not constructed in both the warp and the weft of 2-ply yarns that are also plied with an elastomeric monofilament. Nevertheless, Tribal proposed a narrowing of the definition of the subject fabrics by adding a fabric weight, a yarn twist requirement and a reference to dress and casual wear in the end-use provision.

In response to further suggestions made by Consoltex⁸ concerning Tribal's proposal to narrow the definition of the subject fabrics, Tribal suggested, by letter dated June 6, 2003, that the following changes be made to the description:

- Specify a minimum fabric weight of 200 g/m²
- Include a yarn twist of 450 turns per metre or more
- Specify end uses that are restricted to women's dressy and fine apparel wear

Tribal submitted that Consoltex's final proposal to delete from the definition pants and shorts that are not part of a suit or ensemble is unacceptable, given that pants and shorts, as separates, are important products for which the subject fabrics are used.

With respect to issues raised by the CCRA on a revised description of the subject fabrics, Tribal stated that, in the yarn and textile industry, yarns are referred to as 2-ply yarns with an elastomeric monofilament, rather than 3-ply yarns, and suggested the possible use of the alternative wording "2-ply

7. Consoltex provided 23 sample fabrics with its response to the Tribunal's questionnaire.

8. By letter dated May 16, 2003.

yarns that are also plied with an elastomeric monofilament”. Tribal indicated that the description with the terms “dressy” and “fine” in relation to apparel is workable, as these terms are recognized in the industry. Moreover, Tribal noted that, in the past, the CCRA had no problem using the terms “dress” and “fine” in various tariff items relating to apparel, e.g. 5111.11.10, 5111.19.10 and 5111.90.10. However, Tribal would not object to the removal of these terms if necessary because, in its view, the description of the fabrics already gives sufficient protection to Consoltex, which does not produce two-way stretch fabrics that fall within the definition of the subject fabrics.

Lana Lee Fashions Inc. (Lana Lee)

Lana Lee, of Montréal, Quebec, was incorporated in 1947 and manufactures women’s separate and co-ordinated sportswear, including pants, jackets, skirts and tops. Lana Lee stated that it is well known for the quality of its products and service and that it has gained significant market share in Canada and the United States.

Lana Lee supported the request for tariff relief because no domestic textile manufacturer has the capacity to produce two-way stretch, 2-ply polyester/rayon/elastomeric monofilament fabrics. Lana Lee stated that the blend and the fabric construction make the subject fabrics unique and very easy to work with, and the resulting finished product is comfortable, well fitting and stylish. Apparel made with the subject fabrics is also easy to care for, which is a necessary characteristic in today’s market.

Lana Lee submitted that it serves a quick response market and that it must be able to have access to competitive raw material with short lead times and at competitive prices. It indicated that textile mills in Turkey and China are able to meet its needs with respect to quality, volume, time and pricing. Lana Lee stated that the subject fabrics are growing in importance and that, in order to remain competitive in its core markets, it must have access to such fabrics at market prices.

Lana Lee stated that it must compete with imports of finished products from low-cost countries that are shipping these items to Canada duty and quota free. Lana Lee indicated that, without tariff relief, it cannot be competitive and that it would need to examine other strategies, such as importing finished products, should tariff relief not be granted.

Ballin/Korinna (Ballin)

Ballin, of Ville Saint-Laurent, Quebec, was founded in 1946 and manufactures men’s trousers and shorts, as well as women’s sportswear (jackets, pants, dresses, shorts and skirts). The company is privately owned and employs in excess of 450 people in Canada. Since the early 1990s, Ballin has established itself as a producer of high-end trousers and shorts with a significant presence in the U.S. market, and it has signed licence agreements to market well-known brands, such as Pierre Cardin, Van Heusen, Bill Blass, Harve Benard and Emmanuel Ungaro.

Ballin supported Tribal’s request for tariff relief on the subject fabrics for the following reasons: (1) such two-way stretch fabrics are not produced in Canada; (2) duty on the finished products from the LDCs has been eliminated as of January 1, 2003; and (3) these fabrics have a certain exclusivity and allure which appeal to retailers and consumers of high-quality garments. Moreover, according to Ballin, domestic fabrics do not have the physical characteristics or composition of the subject fabrics.

Ballin submitted that it would be in its interest to manufacture apparel with NAFTA-originating textile inputs so as to export these items to the United States duty free. Moreover, tariff preference levels would not be an issue. Ballin stated that, where domestic textile mills produce appropriate fabrics for its needs, it purchases fabrics from these producers. However, given the dynamic nature of the textile and

apparel industries, it is important for Ballin to acquire specific fabrics that will be marketable in a targeted niche within a short time frame. Ballin stated that the subject fabrics meet these criteria, while fabrics offered by domestic manufacturers do not.

Ballin submitted that, unless it follows market trends and demands, it faces a decline in its sales. If Ballin cannot meet the market demand for the requested apparel, it will be supplied by foreign imports of finished goods. Factors such as price and quality are of utmost importance for Ballin in today's market.

Ballin stated that the duty rate of 15 percent is a significant factor in the cost of a textile input and that the cost of a fabric represents a significant portion of the total cost of the finished product. Tariff relief would therefore enable Ballin to sell women's apparel made with the subject fabrics at competitive prices in Canada and the United States. This, in turn, would help Ballin maintain or increase its sales volume and help it maintain a competitive position in the Canadian marketplace. Ballin also stated that tariff relief would allow it to compete more efficiently and ensure that it saves and maintains jobs in Canada. According to Ballin, it is important to maintain its factories, as customers still require flexibility and quick turnaround times in a market that reacts to quick change.

Pinpoint Fashions (Pinpoint)

Pinpoint, of Ville Saint-Laurent, Quebec, was established in 1985. Pinpoint stated that it is well known to Canadian and some international retailers and that it has high standards of quality and service.

Pinpoint supported Tribal's request for tariff relief on the subject fabrics, since such fabrics are not available from Canadian producers. In this regard, Pinpoint stated that Consoltex and Doubletex do not have fabrics similar to the subject fabrics that meet the needs of its customers. Furthermore, Pinpoint indicated that tariff relief would make it more competitive domestically and vis-à-vis imports of finished garments, thereby permitting it to increase production and market share. According to Pinpoint, tariff relief would also provide an incentive to continue producing garments locally rather than importing finished apparel from LDCs, duty free.

Pinpoint stated that the two-way stretch quality of polyester/rayon fabrics is unique and allows it to give style to a garment and a closer body fit, without having to sacrifice the smooth touch sought by consumers. The subject fabrics are readily available from China and Turkey and meet Pinpoint's needs in terms of quality and quick delivery times.

Textile Industry

Consoltex

Consoltex, of Ville Saint-Laurent, Quebec, is a major producer of fabrics of man-made fibres. 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.

Consoltex initially opposed the request for tariff relief on the basis that it produces stretch fabrics that are sold through its fashion and outerwear divisions for use in fashion, sportswear, active wear and street wear apparel markets. Consoltex stated that DuPont produces many stretch yarns, including Lycra®,⁹ as well as Nylon T800 (also known as Ispira™ and introduced by DuPont five to six years ago) and Poly T400, which are also sold under the Lycra® banner. Consoltex stated that, depending on the customer's requirements (including price), it uses Lycra® or another elastomeric yarn and blends it with nylon, polyester, polyester/cotton or polyester/rayon yarns. Consoltex stated that its Nylon T800 and Poly T400 stretch yarns can also be blended with cotton or rayon yarns in the warp and/or the weft.

9. The registered trademark owned by the DuPont Company for spandex filament yarn.

Consoltex stated that it has had more success in selling its stretch fabrics to the United States than in the domestic market, mainly because of price. In this regard, Consoltex indicated that the cost of rayon/Lycra® yarns is about three to four times higher than the cost of stretch polyester or regular rayon yarns. Consoltex stated that imports of low-priced stretch fabrics from China and Turkey make its fabrics less attractive in the Canadian market.

Consoltex submitted that, in order to protect its business of stretch fabrics, both domestic and export, the description of the subject fabrics should be narrowed in terms of fabric weight, yarn twist and end uses. After a round of communications regarding different proposals to amend the product description, Consoltex agreed to Tribal's revised description of June 6, 2003. However, in response to comments made by the CCRA concerning this revised product description, Consoltex suggested excluding pants and shorts (except those forming parts of women's suits and ensembles) from the definition, unless an alternative administrable distinction could be found between dressy and casual pants and shorts. It proposed the following wording:

Woven fabrics, containing 60 percent or more by weight of polyester staple fibres, 30 percent or more by weight of rayon staple fibres, mixed with 10 percent or less by weight of elastomeric monofilament, constructed in both the warp and the weft of 3-ply yarns consisting of two single staple fibre yarns plied with one elastomeric monofilament and which have a twist of 450 turns per metre or more, weighing 200 grams per square metre or more, of subheading 5515.11, for use in the manufacture of women's suits and ensembles [pants and shorts are included if part of a suit or an ensemble], jackets, blazers, dresses and skirts.

OTHER INFORMATION

DFAIT informed the Tribunal that Canada currently maintains quota restraints on woven fabrics of a polyester staple fibre/rayon blend (subcategory 37.1), imported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. Accordingly, this coverage includes the subject fabrics of subheading No. 5515.11.

In addition, DFAIT also indicated that it would consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove customs duties on the basis of non-availability of domestic supply. Ex-quota treatment will 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 its normally incurred costs, to administer the tariff relief should it be granted on the subject fabrics described in the notice of commencement of investigation. However, the CCRA would not recommend the use of the terms "dressy and fine apparel wear", as they are subjective and, therefore, not administrable. According to the CCRA, if such terms were used, it would have to apply the broadest interpretation when administering the tariff relief provided for the subject fabrics. The CCRA also indicated that it would prefer the use of the wording "3-ply yarns consisting of two single staple fibre yarns plied with one elastomeric monofilament" in lieu of "2-ply yarns that are plied with an elastomeric monofilament".

ANALYSIS

The Minister's terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff and, in so doing, to take into account all relevant factors, including the substitutability of an imported fabric for a domestic fabric and the ability of domestic producers to serve the Canadian downstream industries. Consequently, the Tribunal's decision on whether to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

According to Tribal, there are no domestic textile manufacturers that make or have the ability to make fabrics that have, both in the warp and the weft, 2-ply fibre yarns that are plied with an elastomeric monofilament, which gives the fabrics their two-way stretch capability. This position was contested by Consoltex, which argued that it produces and sells stretch fabrics for use in fashion, sportswear, active wear and street wear apparel markets. In this regard, it suggested that the description of the subject fabrics should be narrowed in order to protect this business. Although Tribal indicated that the sample fabrics provided by Consoltex lacked the requisite construction and two-way stretch characteristics of the subject fabrics, it agreed to Consoltex's request to narrow the definition of the subject fabrics with further refinements to Consoltex's proposal. Consoltex agreed to Tribal's revisions and no longer opposed the request for tariff relief. The agreed product description¹⁰ is the following:

Woven fabrics, containing 60 percent or more by weight of polyester staple fibres, 30 percent or more by weight of rayon staple fibres, mixed with 10 percent or less by weight of elastomeric monofilament, constructed in both the warp and the weft of 2-ply yarns that are plied with an elastomeric monofilament, and which have a twist of 450 turns per metre or more, weighing 200 grams per square metre or more, of subheading No. 5515.11, for use in the manufacture of women's dressy and fine apparel wear (suits and ensembles, trousers, pants, jackets, blazers, dresses, skirts and Capri).¹¹

As noted above, the CCRA expressed some concerns with respect to the use of the terms "dressy", "fine" and "2-ply yarns that are plied with an elastomeric monofilament" in the description of the subject fabrics. Regarding the use of the terms "dressy" and "fine" to define the apparel that could be produced with the subject fabrics in order to allow users of these fabrics to obtain tariff relief, the CCRA indicated that, should difficulties arise regarding the interpretation of these terms upon the importation of the subject fabrics, it would have to apply the broadest interpretation. This led Consoltex to suggest a further amendment to the end-use provision in the above description to exclude pants and shorts, except those forming parts of women's suits and ensembles. This latter suggestion was unacceptable to Tribal.

Notwithstanding Consoltex's position that it produces and sells stretch fabrics, the Tribunal is of the view that there is no domestic fabric identical to or substitutable for the subject fabrics. The subject fabrics and, *inter alia*, their two-way stretch characteristic are such that the fabrics are differentiated from any offerings of the domestic industry. However, the Tribunal takes note of Consoltex's concerns with regard to protecting its existing business of stretch fabrics. Tribal also shared this concern, as it agreed to a final product description that is more restrictive than what it had originally submitted. As for the CCRA's concerns regarding the administrability of the proposed tariff relief, the Tribunal is of the view that the particular characteristics of the subject fabrics, i.e. constructed in both the warp and the weft of 2-ply yarns that are also plied with an elastomeric monofilament, are such as to make these fabrics distinctive and assist the CCRA in determining whether they qualify for tariff relief. Moreover, the Tribunal notes that the terms "dress" and "fine" have been used in various tariff items¹² in the *Customs Tariff* and that the handling of enforcement issues under these tariff items could assist the CCRA in administering the use of these terms in the present case. Consequently, the Tribunal is of the view that tariff relief should be provided for the subject fabrics on the basis of the description agreed to by Tribal and Consoltex, except for the substitution of the word "dressy" by "dress", a term that should be more familiar to the CCRA, given that it is already used in various tariff items.

Regarding the reference to "2-ply yarns that are plied with an elastomeric monofilament" as opposed to "3-ply yarns consisting of two single staple fibre yarns plied with one elastomeric monofilament", the Tribunal agrees with Tribal that the latter description may lead to some confusion in the industry. Therefore, the Tribunal adopts the suggestion made by Tribal that this portion of the description should read "2-ply yarns that are also plied with an elastomeric monofilament."

10. Tribal letter dated June 6, 2003.

11. Tribal unintentionally left the word "shorts" out of the description.

12. See, for example, tariff item Nos. 5111.11.10, 5111.19.10 and 5111.90.10.

In light of the foregoing, the Tribunal is of the view that there are no domestic fabrics identical to or substitutable for the subject fabrics. Therefore, although the corresponding duty revenues would be forgone by the government, the Tribunal does not believe that there would be any direct commercial costs associated with the removal of the customs duty on the importation of the subject fabrics. On the basis of the information provided to the Tribunal, tariff relief would provide yearly benefits of approximately \$650,000 to Tribal and other users of the subject fabrics. In addition, tariff relief would provide benefits to users of the subject fabrics in the form of reduced costs, which could translate into benefits to the consumer in terms of lower prices. In summary, the Tribunal finds that the tariff relief requested by Tribal would provide net economic gains to Canada.

With respect to Tribal's request that tariff relief be effective "immediately", the Tribunal interprets this request to mean that Tribal 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 exceptional circumstances. Tribal has provided no evidence to justify such a request. Therefore, the Tribunal is not persuaded that the current circumstances are so exceptional¹³ 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 woven fabrics, containing 60 percent or more by weight of polyester staple fibres, 30 percent or more by weight of rayon staple fibres, mixed with 10 percent or less by weight of elastomeric monofilament, constructed in both the warp and the weft of 2-ply yarns that are also plied with an elastomeric monofilament, with a twist of 450 turns per metre or more, of a weight of 200 g/m² or more, of subheading No. 5515.11, for use in the manufacture of women's dress and fine apparel wear (suits, ensembles, jackets, blazers, dresses, skirts, pants, capri pants and shorts).

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

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Member

13. 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* (12 January 2001), TR-2000-002 at 4 (CITT).