

**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
HI FIBRE TEXTILES (SUGOI) LTD.  
REGARDING  
POLYESTER KNITTED JERSEY FABRIC**

**JANUARY 29, 1996**

**HI FIBRE TEXTILES (SUGOI) LTD.**

**REQUEST NO.: TR-94-014**

**Request No.: TR-94-014**

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## 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 8, 1995, the Tribunal received a request from Hi Fibre Textiles (Sugoi) Ltd. (Hi Fibre) of Burnaby, British Columbia, for the immediate and permanent removal of the customs duty on importations of TD1300C (Fieldsensor), a 100 percent polyester double knit jersey fabric, of 22 gauge construction, made of 100 denier/72 filament woolly bright yarn on the surface and 75 denier/36 filament drawing textured yarn on the back side, of a weight of 245 g per linear yard and a width of 60 in., for use in the production of women's and unisex cycling jerseys (the subject fabric).

On May 15, 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 May 27, 1995, edition of the Canada Gazette, Part I.<sup>2</sup>

As part of the investigation, the Tribunal's research staff sent questionnaires to potential domestic producers. Questionnaires were also sent to known users and several potential importers of fabrics identical to or substitutable for the subject fabric. A letter was sent to the Department of National Revenue (Revenue Canada) requesting information on the tariff classification of the subject fabric, and a sample was provided for laboratory analysis. Letters were also sent to a number of other government departments requesting information and advice.

On July 19, 1995, a staff investigation report, summarizing the information received from these departments, Hi Fibre and other firms that responded to the questionnaires, was provided to the parties that had filed notices of appearance for this investigation. These parties are Hi Fibre, Louis Garneau Sports Inc. (LGS) and the Canadian Textiles Institute (CTI).

Following the issuance of that report, the Tribunal received a submission from LGS and a response from Hi Fibre. In its submission, LGS indicated that, in the autumn of 1995, it would cease importing a fabric that it had been using to produce cycling jerseys and replace that fabric with one produced domestically by Con-Trade Textiles Inc. (Con-Trade) of Montréal, Quebec. LGS further submitted that the domestically produced fabric is identical to or substitutable for the subject fabric.

In view of the emergence of a domestic producer not previously identified, the Tribunal sent a letter to all parties on August 23, 1995, informing them that it would send a questionnaire to Con-Trade and that the staff investigation report dated July 19, 1995, would be revised using the information provided in

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

2. Vol. 129, No. 21 at 1757.

Con-Trade's response. The revised staff investigation report was distributed to parties and Hi Fibre for comments to the Tribunal.

The revised report provides a summary of all the information that the Tribunal received from Hi Fibre, the respondents to the questionnaires, including Con-Trade, and their representatives.

A public hearing was not held for this investigation.

### **PRODUCT INFORMATION**

The subject fabric, trademarked "Fieldsensor," is a double knit which is made in Japan from two 100 percent polyester yarns of different deniers. Polyester fibres do not absorb liquid. However, the structure of the subject fabric creates a liquid-absorbing mechanism. The yarn in the outer layer is finer than the yarn in the inner layer. This structure causes a gradient suction to take place, thereby forcing liquid to move from the inner layer to the outer layer. The liquid stays on the surface of the outer layer where it evaporates, leaving the inner layer dry.

According to Revenue Canada, the subject fabric is classified for customs purposes under tariff item No. 6002.93.00 of Schedule I to the *Customs Tariff*.<sup>3</sup> It is dutiable, in 1995, at 20.5 percent *ad valorem* under the MFN tariff; at 18.0 percent *ad valorem* under the BPT; at 7.5 percent *ad valorem* under the U.S. tariff; and at 20.0 percent *ad valorem* under the Mexico tariff.

Revenue Canada confirmed that the subject fabric is a double, weft-knit fabric made from two different single yarns of polyester filaments and that the number of filaments per yarn in the sample tested agrees with the values specified in the request. However, the deniers of both yarns are higher than those specified in the request (i.e. 110 versus 100 for the surface yarn and 81 versus 75 for the backside yarn), and the fabric weight is less, at 197 g per linear yard, than the 245 g per linear yard specified in the request. In addition, Revenue Canada confirmed that the subject fabric has 35 wales per linear inch, which is more than expected in a fabric produced on a 22-gauge machine. Revenue Canada noted, in its report, that the higher value obtained for the number of wales may be explained by the fact that the tension of the fabric on the knitting machine is usually greater than the tension of the finished fabric.

Revenue Canada provided the following comments in the event that tariff relief is granted:

- (1) The description should specify the number of wales per centimetre in the finished fabric<sup>4</sup> rather than the gauge of the knitting machine.
- (2) The fabric weight should be expressed in grams per square metre, the width in metres and the yarn count in decitex to conform to the metric terminology used in the *Customs Tariff*.
- (3) The terms "woolly" and "drawing," which pertain to the definition of the yarns used to make the subject fabric, should be deleted. In the former case, the deletion was suggested to avoid

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

4. Revenue Canada found 14 wales per centimetre in the sample tested.

confusion, as there is no wool used in the production of the subject fabric and, in the latter case, Revenue Canada is not able to determine whether textured filament yarn is produced by a draw texturing process or by some other process.

Hi Fibre uses the subject fabric to produce women's and unisex cycling jerseys. Hi Fibre has been a producer of technical clothing for the bicycle industry in Canada since 1986. The production process<sup>5</sup> starts with the design of the jerseys and any graphic styles. The subject fabric is cut and sewn; in the case of articles that will have a printed graphic, the subject fabric is cut and the individual pieces are printed with a graphic design or colour using sublimation printing.<sup>6</sup> The printed pieces are then sewn to produce a finished jersey. One metre of the subject fabric is required to produce one cycling jersey. The subject fabric is the only one used by Hi Fibre to produce cycling jerseys. All production takes place at Hi Fibre's facility in Burnaby, and no subcontractors are used. Hi Fibre indicated that the subject fabric is not used to produce other end products. Hi Fibre markets the cycling jerseys made from the subject fabric under its brand name "Sugoi." The Fieldsensor name is very well known to Canadian retailers of cycling garments and, regarding cycling jerseys, the Sugoi brand name is synonymous with the Fieldsensor name.

Imports of the subject fabric originate in Japan. Total Canadian imports of the subject fabric, in 1994, were about 16,000 linear metres, having a value for duty of approximately \$100,000. The volume of imports anticipated for 1995 remained unchanged. However, the value increased marginally due to fluctuations in the value of the Japanese yen. In 1994, LGS reported imports of allegedly substitutable fabrics from the United States of over 30,000 linear metres, having a value for duty of under \$110,000. For 1995, LGS reported no anticipated imports, as it intended to shift its source of supply to the domestic producer, Con-Trade.

The apparent Canadian market for the subject fabric and allegedly substitutable fabrics for use in the production of women's and unisex cycling jerseys, in 1994, is estimated to be just under 50,000 linear metres. This estimate is based on the combined purchases of imports reported by Hi Fibre and LGS, the two major domestic manufacturers of cycling jerseys.

## **REPRESENTATIONS**

Hi Fibre's request is for the immediate and permanent removal of the customs duty on importations of the subject fabric. The estimated duty savings for Hi Fibre would exceed \$14,000 annually.

Hi Fibre's position is that, as the sole domestic producer of cycling jerseys made from the subject fabric, it will not be able to remain competitive against imports of U.S. cycling jerseys that are produced from the subject fabric, unless it is granted tariff relief.

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5. The production process applies to cycling jerseys and other cycling clothing products.

6. Sublimation printing is a heat transfer printing method. Sublimation ink is printed on full garment size paper. Cut fabric pieces are lined up on the printed paper and are placed under a 54 in. x 92 in. press at a temperature that is significantly higher than for regular heat transfer printing. The ink vaporizes and permeates the fabric, thereby transferring the design.

Hi Fibre alleges that there is no substitute for the subject fabric. It contends that the cycling jerseys made from the subject fabric have a superior reputation among consumers, a fact that LGS has acknowledged in its submissions. That superior reputation places those cycling jerseys in a market segment separate from that for other cycling jerseys, including those produced by LGS. Hi Fibre reports that its attempts to locate a domestic producer that can manufacture an identical or substitutable fabric have been unsuccessful and alleges that Canadian fabric producers are not interested in attempting to produce such a fabric, which they perceive to be a specialized, low-volume item. However, Hi Fibre believes that, if it replaces the subject fabric with another fabric, its cycling jerseys will no longer be in a separate market segment. Hi Fibre believes that its products will be shifted into direct competition with LGS in its market segment, which will leave the specialized market entirely to imports of U.S. cycling jerseys made from the subject fabric.

Hi Fibre argues that the disparity between the MFN rate of duty applicable to imports of the subject fabric into the United States and the rate applicable to imports into Canada gives U.S. manufacturers a competitive advantage over Hi Fibre. The U.S. MFN rate of duty, in 1995, is 33.6 percent lower than the rate in Canada. By 1998, the U.S. rate will be 22.5 percent lower than the Canadian rate, but will be 32.5 percent lower than the Canadian rate by 2002. In 2004, the U.S. rate will be 28.5 percent lower than the Canadian rate. Hi Fibre submits that it cannot continue to reduce its selling price in an attempt to remain competitive with U.S. manufacturers/exporters of jerseys made from the subject fabric. If tariff relief is not granted, Hi Fibre stated that it would bow out of the specialized market, retaining only a small inventory for custom orders.

Hi Fibre reported that it had conducted test runs of many fabrics that are claimed to have characteristics similar to those of the subject fabric, but found them not suitable for sublimation printing and lacking in functional performance. Respecting the allegedly substitutable fabric developed by Con-Trade, Hi Fibre argues that it is not identical or substitutable, in view of the different yarn size used in the surface yarn, compared to the subject fabric, and the wicking finish of the Con-Trade fabric which, in Hi Fibre's view, will deteriorate over time. According to Hi Fibre, the allegedly substitutable fabric does not meet the durability standard that is expected by purchasers of the subject fabric and that is an important element of its reputation for superior performance.

LGS is the only other known major domestic producer of women's and unisex cycling jerseys. LGS strongly opposes the request for tariff relief. LGS submits that the allegedly substitutable fabric produced by Con-Trade is a 100 percent polyester fabric that was developed for LGS. Although the fabric will be available to all potential users, the volume purchased by LGS will carry its trade name "Airdry." This is the same trade name that LGS assigned to the imported fabrics that it has been using to produce cycling jerseys.

LGS contends that "Airdry" jerseys compete directly with "Fieldsensor" jerseys in the finished jersey market. LGS submits that the jerseys produced from the two fabrics have the same technical features, cater to the same customers (professional and amateur) and, thus, serve identical market niches. LGS contends that the difference between the average wholesale selling prices of the cycling jerseys made from the two fabrics is small and does not support the conclusion that the two fabrics serve different market niches.

LGS argues that, if tariff relief is granted, Hi Fibre will reduce the selling prices for its cycling jerseys. This will remove the historical price differential between the jerseys made from the subject fabric and LGS's jerseys that offsets the competitive advantage of the subject fabric's superior reputation. This price differential has allowed LGS to remain competitive and retain its share of the Canadian market for cycling jerseys. LGS submits that a reduction in the price of jerseys made from the subject fabric of slightly more than 4 percent will, due to the high reputation of the subject fabric, force it to switch from the domestically produced fabric to the subject fabric in order to avoid losing substantial market share.

Even after removal of the tariff, the subject fabric would be higher-priced than the domestically produced fabric. LGS submits that the switch to the subject fabric will increase its fabric costs. LGS contends that it will have to absorb that additional cost and reduce its margin in order to remain competitive with Hi Fibre. In LGS's view, the additional cost of purchasing the subject fabric should be considered a cost of granting the tariff relief as requested.

LGS submits that the benefit to Hi Fibre, if tariff relief is granted, is insignificant, as it amounts to a very small percentage of Hi Fibre's total annual sales of jerseys. Furthermore, it contends that the benefit is very small compared to the benefits determined in other cases decided by the Tribunal, such as Request Nos. TR-94-002<sup>7</sup> and TR-94-004,<sup>8</sup> and asks the Tribunal to consider the relative order of magnitude of the benefit in the current request and the previous requests that have been considered by the Tribunal. LGS also expresses doubt that Hi Fibre will secure the commercial benefits, if the tariff relief is granted, in view of the general appreciation of the Japanese yen and of the likelihood that the Japanese producer/exporter of the subject fabric will secure the benefit of any tariff relief granted by the Tribunal.

LGS contends that the differences in the Canadian and U.S. tariffs do not support Hi Fibre's claim that U.S. exporters of jerseys produced from the subject fabric pay a lower rate of duty and, thus, have a competitive advantage over Hi Fibre in the Canadian market for cycling jerseys. LGS submits that the difference between the import duties paid by Hi Fibre for the subject fabric and the combined import and export duties paid by U.S. jersey producers that use the subject fabric and export their jerseys to Canada will amount to 0.8 percentage point in 1996,<sup>9</sup> 2.2 percentage points in 1997 and 3.6 percentage points in 1998. LGS argues that the lower total duties paid by U.S. exporters are insignificant to their competitiveness in Canada, given that the duties paid by Hi Fibre on imports of the subject fabric only amount to about 4 percent of the wholesale selling price of the finished jersey.

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7. Report to the Minister of Finance: Request for Tariff Relief by Kute-Knit Mfg. Inc. Regarding Combed, Ring-Spun, Polycotton, Blended Yarns, July 5, 1995.

8. Report to Minister of Finance: Request for Tariff Relief by Woods Canada Limited Regarding Certain Printed Cotton Fabrics, June 8, 1995.

9. LGS based its calculation on the following methodology. In 1996, the rate of duty paid by Hi Fibre on imports of the subject fabric will be 19.0 percent. In the same year, U.S. jersey producers will be subject to a rate of duty of 13.2 percent on imports of the subject fabric and 5.0 percent on exports of jerseys to Canada, for a combined rate of duty of 18.2 percent. The difference between Hi Fibre's and the U.S. exporters' combined rates of duty is, according to this method of analysis, 0.8 percentage point in 1996.

Con-Trade opposes the request for tariff relief. Con-Trade submits that its recently developed fabric, style number 1525, which will be used by LGS under the trademark “Airdry” to produce cycling jerseys, has the same technical characteristics as the subject fabric and is, therefore, identical to or substitutable for the subject fabric. Con-Trade submits that it can produce upwards of 10,000 linear metres per week of style number 1525, which it will sell to any user, although, currently, its principal customer is LGS. Con-Trade submits that, if the requested tariff relief is granted, it can lose its supply arrangement with LGS and the related sales revenue, as LGS will switch to using the subject fabric. Con-Trade also contends that Hi Fibre will benefit from using the domestically produced fabric that, Con-Trade submits, is of equal quality and which is lower-priced and available with shorter lead time than the subject fabric.

The CTI represents Canadian manufacturers of textiles. In its submission in response to the staff investigation report, the CTI opposes the request on the basis that tariff relief will disrupt the competitive balances achieved by market forces under the normal tariff regime. The CTI also submits that the volume of the subject fabric used in Canada may be too small to warrant production by domestic knitters. However, the CTI notes that domestic production is being established, and it submits that this production will be damaged by the removal of the tariff.

The Department of Foreign Affairs and International Trade informed the Tribunal that Canada does not maintain quota restraints on fabrics classified under classification No. 6002.93.00.14. However, fabrics classified thereunder are included in items 86 and 86.2 of the Import Control List.<sup>10</sup> Accordingly, Canadian importers wishing to import these fabrics are required, under the *Export and Import Permits Act*,<sup>11</sup> to apply for an import permit.

Revenue Canada indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief should it be granted. It also made several suggestions about the appropriate terminology to be used to describe the subject fabric, as noted earlier.

## **ANALYSIS**

The terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff. In the present case, the parties involved are Hi Fibre, the requester, Con-Trade, a domestic producer of an allegedly substitutable fabric, and LGS, a Canadian manufacturer of cycling jerseys. In assessing the economic impact of reducing or removing the tariff, the Tribunal took into account all relevant economic factors, including the substitutability of domestically produced textiles for imported textiles, the impact of tariff rate differentials between Canada and the United States on competitiveness, domestic versus foreign price competition, the ability of domestic producers to supply Canadian needs and the potential impact on domestic competitors. The Tribunal will recommend tariff relief only if it provides net economic gains for Canada.

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10. Fabrics classified under classification No. 6002.93.00.14 originating in the United States or Mexico are not included in the Import Control List.

11. R.S.C. 1985, c. E-19.



**Substitutability**

In considering the issue of the substitutability of a domestically produced fabric for the subject fabric, the Tribunal examined, in particular, the technical descriptions and performances of “Airdry,” the domestically produced fabric, and “Fieldsensor,” the subject fabric, and their relative market acceptance.

The technical descriptions of the two fabrics establish that they are both 100 percent polyester, double-knit fabrics, of two yarns of different deniers on the surface and backside of the fabrics, that they are suitable for printing and that they will transfer moisture from the inner layers to the outer layers, the latter feature commonly being referred to as wicking capability. These common physical characteristics indicate that the domestically produced fabric will fall under the same classification number as the subject fabric. The slight differences between the two fabrics, such as the different surface yarn sizes, would not require a different classification number for the domestically produced fabric.

The specifications provided for the domestically produced fabric clearly show that it differs in yarn size and relies on a wicking finish rather than on its construction for the transfer of moisture through it. The Tribunal finds reasonable Hi Fibre’s contention that the wicking finish on the domestically produced fabric will not be as durable as the incorporation of the wicking capability into the construction of the fabric. However, although the domestically produced fabric is possibly less durable than the subject fabric, it must be acknowledged that the former still provides a wicking capability, which is one of the principal characteristics of cycling jerseys produced from the subject fabric.

In view of the importance of the technical features of the subject fabric to the competitiveness of jerseys made from it, the Tribunal concludes that the domestically produced fabric, while not identical to the subject fabric, nonetheless has very similar features and, consequently, can technically be used as a substitute fabric for its intended end use.

However, before concluding whether the domestically produced fabric is substitutable for the subject fabric, the Tribunal considered one additional criterion: market acceptance. Hi Fibre’s justification for tariff relief is that its cycling jerseys are differentiated (e.g. strong brand name), are placed in a market niche different from that of other cycling jerseys and compete only with finished jerseys made from the subject fabric and imported from the United States, and not with LGS’s jerseys. The Tribunal accepts that, respecting cycling jerseys, Hi Fibre’s main business interest is to produce and sell goods made from the subject fabric. In that context, it appears that nothing but the subject fabric is acceptable to Hi Fibre, and no other fabric, either produced domestically or imported, is an acceptable substitute.

Having weighed the evidence available on technical characteristics and market acceptance, the Tribunal accepts the contention that, for Hi Fibre, there is no substitute for the subject fabric available from domestic production.

**Impact of Tariff Rate Differentials between Canada and the United States**

Hi Fibre contends that the tariff relief will assist it to compete against imports of U.S. jerseys made from the subject fabric because it will alleviate an alleged advantage held by the U.S. exporters arising out of the lower MFN rate of duty applicable to the subject fabric in the United States, compared to the Canadian

MFN rate. In 1995, the Canadian and U.S. MFN rates were 20.5 and 13.6 percent, respectively. LGS contends that the correct comparison of the relative tariff protection should include the U.S. export duties on shipments of cycling jerseys to Canada. According to LGS's computations, this yields a net difference in applicable duties of only 0.8 percentage point in favour of the U.S. exporters for 1996. This, concludes LGS, is negligible and demonstrates that Hi Fibre and its U.S. competitors are operating on a level playing field.

The Tribunal finds that LGS's approach to comparing the relative levels of tariff protection is too simplistic and fails to consider that U.S. exporters can get a refund of import duties imposed on inputs when finished goods are exported abroad (similar to the Canadian drawback system). Until the end of 1995, U.S. exporters of jerseys made from the subject fabric will essentially source the subject fabric duty-free, at a significant competitive advantage over Hi Fibre, even after Canadian import duties on the jerseys are taken into account.

While it is true that the drawback system will be subject to significant modifications on January 1, 1996,<sup>12</sup> and that these changes will help to reduce the competitive disadvantage suffered by Hi Fibre, the Tribunal feels that, in and of themselves, these changes will not be enough to restore the level playing field between Hi Fibre and the U.S. suppliers of jerseys made from the subject fabric. The cost advantage, over Hi Fibre, enjoyed by U.S. producers of cycling jerseys due to the lower U.S. MFN rate of duty on imports of the subject fabric from Japan was 6.9 percentage points in 1995 and will be 5.8 and 4.0 percentage points in 1996 and 2004, respectively.<sup>13</sup>

### **Price Competition**

The Tribunal considered the important relationship between the prices of the two fabrics, the selling prices of the cycling jerseys made from them and the market acceptance of both the fabrics and the jerseys. In this case, the landed price of the subject fabric is significantly higher than the price of the allegedly substitutable fabric. However, the wholesale selling prices of the cycling jerseys produced from the two fabrics must also be taken into account when considering the role of price as a determining factor of competition. Jerseys made from the subject fabric are the higher priced of the two garments, and the Tribunal accepts Hi Fibre's position that the subject fabric's renown and high degree of consumer acceptance enable jerseys made from the subject fabric to command a higher price. However, the information available indicates that the difference between the wholesale selling prices of the cycling jerseys produced from each of the two fabrics is marginal.

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12. After that date, firms exporting to NAFTA countries will be eligible to receive drawbacks based on the lesser of the duties paid on the imported goods and the duties paid on the exported goods. The NAFTA duties for trade between Canada and the United States will be eliminated on January 1, 1998. Consequently, as of that date, no duty drawback will be available.

13. The appendix to this report displays the current Canadian and U.S. MFN rates of duty and the reduction schedule to January 1, 2004.

**Ability of Domestic Producers to Supply Canadian Needs**

The Tribunal also considered whether the domestic producer has the ability to supply the market. Presently, LGS's anticipated purchases constitute the entire demand for the domestically produced fabric, as LGS has committed to replace its imports with the fabric produced by Con-Trade. According to the evidence, Con-Trade has the capacity to supply both LGS and Hi Fibre at current and anticipated volumes.

**Potential Impact on Domestic Competitors**

The Tribunal is satisfied that a decline in the selling price of the subject fabric and, thus, of Hi Fibre's jerseys, if large enough, will cause a decline in the wholesale selling price of cycling jerseys made from the domestically produced fabric. LGS submitted that a reduction in the wholesale selling price of jerseys made from the subject fabric of slightly more than 4 percent, which is approximately equivalent to the potential impact on Hi Fibre's wholesale price if tariff relief were granted, would cause LGS to purchase the subject fabric. There would also be a considerable impact on Con-Trade, as it would lose all sales, actual and forecast, of the domestically produced fabric to LGS.

In view of the marginal price difference between the subject fabric and the domestically produced fabric and the anticipated impact on LGS and Con-Trade, the Tribunal does not recommend the removal of the MFN tariff on imports of the subject fabric. However, in the Tribunal's view, removing the cost disadvantage stemming from the lower MFN tariff on imports of the subject fabric into the United States compared to Canada will assist Hi Fibre to be more competitive. This can be achieved by reducing the tariff to equal the U.S. MFN tariff on imports of the subject fabric. The benefit to Hi Fibre in the form of duty savings would be in excess of \$9,300 annually, based on Hi Fibre's anticipated imports for 1995.

In considering tariff reduction, the Tribunal examined the price effects and the resulting impact on LGS and Con-Trade. As noted previously, LGS submitted that, if tariff relief resulted in slightly more than a 4 percent decline in the wholesale price of jerseys made from the subject fabric, it would no longer source its fabric from the domestic producer, but would import the subject fabric. However, the Tribunal believes that LGS will not have to adopt this extreme position. First, any reduction in the wholesale price will be much less than 4 percent and, second, it is likely that Hi Fibre will use the duty savings to improve its previously reduced margin on sales of jerseys made from the subject fabric. The Tribunal finds that reducing the Canadian MFN rate of duty to equal the U.S. rate for 1995 will allow Hi Fibre to be fully competitive with imports of U.S. jerseys made from the subject fabric, its major competition in that market segment. The Tribunal believes that this will still allow sufficient room for LGS to continue marketing its jerseys made from the domestically produced fabric at a profit. Consequently, the Tribunal concludes that equalizing the Canadian and U.S. MFN tariffs will not have an adverse economic impact on LGS and that LGS will be competitive using the domestically produced fabric as its textile input.

On the basis of the foregoing, the Tribunal concludes that granting the tariff relief as requested will likely hurt LGS and Con-Trade more than it will help Hi Fibre. However, the evidence presented shows that reducing the Canadian MFN tariff to equal the U.S. MFN tariff on imports of the subject fabric will result in a commercial benefit to Hi Fibre and improve its competitiveness. This outcome would result in little or no cost to Con-Trade, as LGS would continue to use the domestically produced fabric as its textile input.

In summary, the Tribunal finds that reducing the tariff will result in net economic gains for Canada.

**RECOMMENDATION**

In light of the foregoing, the Tribunal hereby recommends to the Minister that the request for the removal of the customs duty on importations of TD1300C (Fieldsensor), a 100 percent polyester double knit jersey fabric, of 14 wales per centimetre construction, made of 122 decitex/72 filament bright single yarn on the surface and 90 decitex/36 filament textured dull single yarn on the back side, of a weight of 145 g/m<sup>2</sup> and a width of 1.54 m, for use in the production of women's and unisex cycling jerseys, be denied, but recommends reducing the Canadian MFN tariff to equal the U.S. MFN tariff on imports of the subject fabric, for an indeterminate period of time.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

**DISSENTING OPINION (MEMBER BERGERON)**

I concur with my colleagues' recommendation to deny the request for the removal of the customs duty on importations of the subject fabric. However, I would not have recommended tariff reduction on the grounds that the removal of any portion of the customs duty currently payable on imports of the subject fabric could lead to lost sales revenue by LGS and Con-Trade, the principal user and the domestic producer of a substitutable fabric, respectively.

My colleagues have concluded that the domestically produced fabric is substitutable for the subject fabric. However, in arriving at their conclusion, they observe that the subject fabric's renown in some way lessens the substitutability of the domestically produced fabric. I feel that the subject fabric's reputation as a superior product is only temporary and that, given time and stable market conditions, LGS and Con-Trade will be successful in developing the domestically produced fabric's reputation and in removing any competitive advantage currently enjoyed by the subject fabric stemming from its renown in the market.

The difference in the wholesale prices of cycling jerseys made from these two fabrics, as observed by my colleagues, is marginal. In fact, these jerseys compete at the same wholesale price point. Consequently, any reduction in the price of jerseys made from the subject fabric by Hi Fibre as a result of removing or reducing the MFN tariff will force LGS to reduce its selling prices in order to remain

competitive. My colleagues and I have accepted the evidence of LGS that, if the MFN tariff is removed, the resulting price reduction by Hi Fibre will render LGS uncompetitive and force the company to switch to the subject fabric. However, my colleagues have concluded that any price reductions that may result from less than the removal of the tariff will neither force LGS to switch to the subject fabric nor be detrimental to LGS's ability to compete against jerseys made from the subject fabric. I concur on the former point. However, I part company with my colleagues on the latter. In my view, there is a likelihood that Hi Fibre will reduce its prices as a result of obtaining a tariff reduction, and this will force LGS and/or Con-Trade to also reduce their prices for the domestically produced fabric. At current volumes, the costs to LGS and Con-Trade of matching Hi Fibre's price reductions would significantly exceed the benefits accruing to Hi Fibre resulting from tariff reduction. I see no reason to inflict these additional costs on these domestic producers, particularly when Con-Trade is just beginning production of a new product, and to upset the current equilibrium in the marketplace.

For all of the foregoing reasons, I conclude that the domestically produced fabric is substitutable for the subject fabric and that there would be a net economic cost to Canada from granting the tariff relief, as requested, or reducing the tariff, as recommended by my colleagues.

Lise Bergeron

Lise Bergeron

Member

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**APPENDIX**

<b>CANADIAN AND U.S. MFN RATES OF DUTY</b>		
	<b>Canada</b> (%)	<b>United States</b> (%)
Base Rate	22.0	14.0
Before January 1, 1996	20.5	13.6
On and after January 1, 1996	19.0	13.2
On and after January 1, 1997	17.5	12.8
On and after January 1, 1998	16.0	12.4
On and after January 1, 1999	16.0	12.0
On and after January 1, 2000	16.0	11.6
On and after January 1, 2001	16.0	11.2
On and after January 1, 2002	16.0	10.8
On and after January 1, 2003	15.1	10.4
On and after January 1, 2004	14.0	10.0