



**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
AUSTRALIAN OUTBACK COLLECTION  
(CANADA) LTD.  
REGARDING  
CERTAIN WOVEN FABRICS OF COTTON**

**OCTOBER 30, 1998**

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## INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference<sup>1</sup> from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.<sup>2</sup> The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations with respect to those requests to the Minister.

Pursuant to the Minister's reference, the Tribunal received a request from Australian Outback Collection (Canada) Ltd. (AOC) on December 4, 1997, for the removal, for an indeterminate period of time, of the customs duty on imports of certain woven fabrics of cotton for use in the manufacture of oilskin coats, jackets or hats.

Soon after the notice of the request was provided on the Tribunal's Web site, the Tribunal was notified that the Canadian Textiles Institute (CTI) had consulted its members and had concluded that the request could be accommodated without harm to Canadian production provided a tariff item could be drafted<sup>3</sup> to specifically cover the fabrics imported by AOC, to the exclusion of other types of water-resistant fabrics.

After several communications, AOC and CTI agreed on a product description to which domestic fabric producers would not have objected. However, the Department of National Revenue (Revenue Canada) expressed reservations about the proposed product description. Revenue Canada was particularly concerned about the insistence of including a water-resistance standard in the product description and about the cost of the testing that would be required to verify whether the product meets this standard. In fact, Revenue Canada recommended that such a standard not be incorporated in the product description or in any tariff item that might be proposed if the Tribunal were to recommend tariff relief.

On May 20, 1998, AOC submitted a final revision to its product description and requested that the Tribunal proceed with its investigation on the basis of that description. This revised product description omitted any reference to the water-resistance standard that had earlier been agreed upon by AOC and CTI.

On June 5, 1998, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation that was distributed and published in the June 13, 1998, edition of the *Canada Gazette*, Part I.<sup>4</sup> The textile inputs were described in the notice of commencement of investigation as woven fabrics, plain weave, solely of cotton, containing two-ply yarns, impregnated with materials that are not predominantly plastic or rubber, weighing not less than 250 g/m<sup>2</sup> but not more than 400 g/m<sup>2</sup>, valued at \$4.50/m<sup>2</sup> or more, for use in the manufacture of coats, jackets or hats (the subject fabrics).

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1. On March 20 and July 24, 1996, and on November 26, 1997, the Minister of Finance revised the terms of reference.

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

3. Previously, concessionary tariff codes generally provided for reduced rates of duty or free entry for a wide range of goods for specified uses. As of January 1, 1998, provisions which are still relevant have been converted, in whole or in part, to regular items in the tariff schedule at the same concessionary rates. Consequently, where a favourable recommendation for tariff relief is accepted, a new tariff item is used in the tariff schedule to distinguish it from other fabrics.

4. Vol. 132, No. 24 at 1317.

As part of the investigation, the Tribunal's research staff sent a questionnaire to the one manufacturer of coats, jackets and hats, Koolah Products of Australia Inc. (Koolah), which had been identified as a competitor in the domestic market that manufactures similar end products incorporating identical or similar fabrics to those for which tariff relief had been requested. In addition, CTI was asked to identify potential Canadian producers of fabrics identical to or substitutable for the subject fabrics, and the Department of Foreign Affairs and International Trade was asked to report on whether quantitative import restrictions would be imposed on the subject fabrics and, if so, under what circumstances.

On June 10, 1998, the Tribunal received a letter from counsel for CTI arguing that the Tribunal had broadened the scope of the investigation beyond the original request to which interested parties had agreed. This was claimed to have resulted from the use of a description of the impregnation which differed from that put forward by AOC and from the omission of a water-resistance standard from the product description.

On June 30, 1998, the Tribunal requested that Revenue Canada arrange to have three fabric samples submitted by AOC analyzed for their respective levels of hydrostatic head and spray rating, in other words, water resistance, and provide a revised description of the subject fabrics, taking into account the foregoing results, that would be appropriate for use in the *Customs Tariff*<sup>5</sup> if tariff relief were to be recommended by the Tribunal.

On August 18, 1998, Revenue Canada reported the results of that testing and incorporated those results in a draft product description, which read: "Woven fabrics, plain weave, solely of cotton, containing 2 ply yarns, impregnated with materials that are predominantly not of plastic or rubber to achieve a hydrostatic pressure of greater than 36 cm of water but less than 54 cm of water, based on ISO 811-1981 using a rate of increase of water pressure of 60 cm of water/min, and a spray rating of ISO 4, based on ISO 4920-1981, all values taken in a standard temperate atmosphere based on ISO 139-1973 using distilled or fully deionized water at  $20 \pm 2^{\circ}\text{C}$ , the impregnated fabric to weigh not less than 250 g/m<sup>2</sup> but not exceeding 400 g/m<sup>2</sup>, and valued at \$4.50/m<sup>2</sup> or more for use in the manufacture of jackets, coats or hats." Copies of the revised product description, including the letter from Revenue Canada and the laboratory report on the samples analyzed, were forwarded to all interested parties for comment.

CTI was generally in agreement with the proposed description. However, it sought reassurance that it would exclude silicone finishes and fluorocarbon finishes and recommended that the wording of the spray rating be changed to read "a spray rating of 4 or higher." AOC also suggested that this latter modification be made to the product description. In addition, Koolah, a BC company that produces oilskin clothing, proposed that only a minimum level be shown for the hydrostatic pressure level required for purposes of tariff relief. If such a change were made, Koolah submitted that it would continue to support the request for tariff relief.

In response to the concerns noted above, Revenue Canada stated that the revised product description does exclude silicone and fluorocarbon finishes. It also agreed that the changes to the levels of hydrostatic pressure and spray rating recommended by interested parties would be appropriate. Nevertheless, as noted in its letter of August 18, 1998, Revenue Canada continued to recommend that standards for hydrostatic pressure and spray rating not be included at all in the proposed product description. It contended that, in addition to the cost to Revenue Canada of carrying out laboratory tests on imports of the subject fabrics, the complexity of the wording would cause confusion for the importing community and administrative difficulties for Revenue Canada itself.

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

Notwithstanding Revenue Canada's concerns, the final product description, as agreed to by interested parties, reads:

woven fabrics, plain weave, solely of cotton, containing 2 ply yarns, impregnated with materials that are predominantly not of plastic or rubber to achieve a hydrostatic pressure of greater than 36 cm of water, based on ISO 811-1981 using a rate of increase of water pressure of 60 cm of water/min, and a spray rating of ISO 4 or higher, based on ISO 4920-1981, all values taken in a standard temperate atmosphere based on ISO 139-1973 using distilled or fully deionized water at  $20 \pm 2^\circ\text{C}$ , the impregnated fabric to weigh not less than 250 g/m<sup>2</sup> but not exceeding 400 g/m<sup>2</sup>, and valued at \$4.50/m<sup>2</sup> or more for use in the manufacture of jackets, coats or hats.

A staff investigation report was not prepared in connection with this investigation. As noted earlier, CTI did not oppose the request for tariff relief, as long as the product description pertaining to the subject fabrics contained the references to water resistance to which it had earlier agreed. The only other interested party to this investigation, Koolah, also expressed its support for the request for tariff relief.

### **PRODUCT INFORMATION**

Revenue Canada advised the Tribunal that the subject fabrics were originally classified under tariff item No. 5907.00.13, but are currently classified under tariff item No. 5907.00.14 which carries an MFN rate of duty of 16 percent. Tariff item No. 9935.00.00, which also currently applies to imports of the subject fabrics, carries a reduced MFN rate of duty of 10 percent. The subject fabrics are dutiable at 10 percent *ad valorem* under the Mexico tariff and are duty free under the US tariff, the Chile tariff and the Canada-Israel Agreement tariff.

Revenue Canada also recommended that tariff item No. 5209.31.00 be included in any recommendation for tariff relief. Chapter 59 pertains to fabrics where the impregnation, coating or covering of the fabrics is directly visible upon simple visual inspection. Since such inspection is often subjective and can create controversial opinions, Revenue Canada suggested that both possible tariff classifications be given for these coated products. Tariff item No. 9935.00.00 would also apply to imports under tariff item No. 5209.31.00, with a reduction in the MFN rate of duty from 15 to 10 percent.

### **REPRESENTATIONS**

#### **Users of the Subject Fabrics**

AOC's request is for the removal of the customs duty, for an indeterminate period of time, on imports of the subject fabrics. AOC, located in Vancouver, British Columbia, has been in business since January 1986. It employs 14 people directly. The subcontractors to whom AOC provides the subject fabrics and who are used by AOC to produce the oilskin clothing employ 70 people.

Its principal production consists of oilskin outerwear (coats and jackets) and oilskin hats, which account for 88 percent and 12 percent, respectively, of the company's output. Ninety-one percent of AOC's output is manufactured in Canada, with the remaining 9 percent produced in the United States.

AOC claimed that the subject fabrics that it imports from the United Kingdom possess a high level of water resistance, that it had canvassed all fabric mills in Canada and that it had determined that there are no domestically produced fabrics which are identical to or substitutable for the subject fabrics.

AOC stated that reduced costs for imports of the subject fabrics would allow it to price its products more competitively, thus penetrating new markets. This, in turn, would result in increased purchasing of all domestic trims/notions and fabrics and result in increased employment opportunities in Canada. Profit margins on established styles would also increase.

Koolah is a privately owned company headquartered in British Columbia. It originally imported oilskin garments from Australia, but switched in the late 1980s to manufacturing its own garments in Canada, using subcontractors. Today, Koolah specializes in the design, manufacture and distribution of high-quality oilskin garments which are sold domestically and exported to the United States, Japan and select countries in Europe. Koolah also produces private-label garments under contract to large US corporations with well-known brands. Koolah imports, from Australia, oilskin fabrics that are similar to the subject fabrics.

Koolah supported the request for tariff relief, claiming that there are no domestic sources for oilskins. Tariff relief would improve Koolah's price competitiveness in export markets, primarily the United States. Removal of the duty would allow it to drop its wholesale prices by 5 to 10 percent, depending on the product.

### **Domestic Textile Producers**

CTI submitted that the product description contained in the Tribunal's notice of commencement of investigation broadened the scope of the investigation beyond that envisaged by it and AOC. CTI argued that the product definition should contain a description of the impregnating substance used on the subject fabrics, as well as a reference to some meaningful water-resistance standards. These concerns were addressed in the final product description agreed to by interested parties.

### **Other Submissions**

The Department of Foreign Affairs and International Trade advised that Canada currently maintains quota restraints on woven cotton fabrics that would include cotton fabrics of subheading No. 5209.31 or 5907.00, the subheadings relevant to the subject fabrics. Bilateral agreements have been in place with the People's Republic of China since 1987 and with the Government of Hong Kong, China, and with the Taiwan Textile Federation since 1979.

There were no submissions from any other parties.

### **ANALYSIS**

The terms of reference direct the Tribunal to evaluate the economic impact that reducing or removing a tariff would have on domestic textile producers and downstream producers and, in so doing, to consider all relevant factors, such as the substitutability of an imported fabric with a domestic fabric, the ability of domestic fabric producers to serve the Canadian downstream industries and the competitiveness of those downstream industries at home and abroad. Consequently, the Tribunal's decision to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

As noted previously, CTI did not oppose the request, provided the product description took into account the concerns put forward by its members, particularly with regard to a water-resistance standard.

Based on the information available to the Tribunal, tariff relief would result in yearly benefits to AOC and to Koolah that would exceed \$100,000. However, administering a new tariff item to provide tariff relief would cause Revenue Canada to incur annual costs for laboratory analyses of the subject fabrics ranging from \$3,000 to \$4,000. Accordingly, the Tribunal finds that there would be net economic benefits arising from the tariff relief requested by AOC.

With regard to the question of complexity and difficulty in administering a new tariff item to provide the tariff relief requested, the Tribunal is not convinced that the product description of the subject fabrics agreed to by the parties would be confusing to importers nor that it would cause difficulties for Revenue Canada. The only two known or potential importers of the subject fabrics have not indicated any confusion on their part in understanding or interpreting the proposed product description, nor has CTI on behalf of its members. Similarly, Revenue Canada has not identified any administrative difficulties other than the need to carry out laboratory analyses of imports of the subject fabrics. The Tribunal does not find this requirement to be onerous, given the net economic benefit that would be derived from tariff relief and the discretion that Revenue Canada has to establish the frequency of the laboratory tests.

### **RECOMMENDATION**

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, plain weave, solely of cotton, containing 2 ply yarns, impregnated with materials that are predominantly not of plastic or rubber to achieve a hydrostatic pressure of greater than 36 cm of water, based on ISO 811-1981 using a rate of increase of water pressure of 60 cm of water/min, and a spray rating of ISO 4 or higher, based on ISO 4920-1981, all values taken in a standard temperate atmosphere based on ISO 139-1973 using distilled or fully deionized water at  $20 \pm 2^\circ\text{C}$ , the impregnated fabric to weigh not less than 250 g/m<sup>2</sup> but not exceeding 400 g/m<sup>2</sup>, and valued at \$4.50/m<sup>2</sup> or more, of subheading No. 5209.31 or 5907.00, for use in the manufacture of jackets, coats or hats.

Peter F. Thalheimer

Peter F. Thalheimer  
Presiding Member

Patricia M. Close

Patricia M. Close  
Member

Anita Szlczak

Anita Szlczak  
Member