

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
DOUBLETEX
REGARDING
HIGH-TWIST, WOVEN FABRIC OF
100 PERCENT COTTON**

DECEMBER 21, 1998

DOUBLETEX

REQUEST NO. : TR-95-013A

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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 with respect to those requests to the Minister.

Pursuant to the Minister's reference, on June 9, 1995, the Tribunal received a request from Doubletex for the permanent removal of the customs duty on importations of a woven fabric of 100 percent cotton, commonly known as greige, for use by textile converters only to produce a dyed and finished fabric for the apparel industry. On September 27, 1995, after determining that the request was properly documented, the Tribunal issued a notice of commencement of investigation.

After the investigation was commenced, Doubletex informed the Tribunal that it was attempting to find a domestic supplier of identical or substitutable fabrics and requested that the investigation be suspended. Accordingly, in the fall of 1995, the Tribunal agreed to a suspension of the investigation.

In April 1998, Doubletex informed the Tribunal that it was unable to find a domestic supplier of identical or substitutable fabrics and asked that the investigation be reopened. On July 17, 1998, the Tribunal issued a notice of recommencement of investigation which was distributed and published in the July 25, 1998, edition of the *Canada Gazette*, Part I.³ The product under investigation was described in the notice as "woven fabric of 100 percent cotton, unbleached, bleached for dyeing only, of yarns with a twist of 1,050 turns per metre or more in the warp and/or the weft, for use by textile converters only to produce a dyed and finished fabric for the apparel industry" (the subject fabric).

As part of the investigation, the Tribunal's research staff sent questionnaires to Doubletex and to potential domestic producers⁴ of identical or substitutable fabrics. Questionnaires were also sent to a number of potential users or importers of the subject fabric.

The Department of National Revenue (Revenue Canada) was asked to provide advice concerning revisions to the *Customs Tariff*⁵ which applied to the subject fabric. In addition, the Department of Foreign Affairs and International Trade (DFAIT) was asked to provide current information on quantitative import restrictions on the subject fabric. The Department of Industry was informed of the request and asked to provide relevant comments. The Department of Finance was also informed of the request.

A staff investigation report, summarizing the information received from these departments, Doubletex and other interested parties, was provided to those parties that had filed notices of appearance for the investigation.

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. Vol. 132, No. 30 at 1754.

4. Consoltex Inc. and Dominion Industrial Fabrics Company.

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

PRODUCT INFORMATION

The subject fabric is commonly known as 100 percent cotton high-twist greige fabric. This fabric is imported unbleached or bleached for dyeing only; therefore, it must be dyed and/or finished before being sold as a finished product. In 1998, according to Revenue Canada, the subject fabric could be imported under any one of 24 tariff items found in the *Customs Tariff*. There were also three other tariff provisions, providing duty reductions, that could apply when the subject fabric meets a specific description or end use. The duty rates for these tariff items are shown in the following table.

DUTY RATES IN 1998			
Tariff Item¹	MFN	US and CIAT	Mexico and Chile
5208.11.10	Free	Free	Free
5208.11.20	8%	Free	7.5%
5208.12.10	Free	Free	Free
5208.12.20	Free	Free	Free
5208.12.30	8%	Free	7.5%
5208.13.10	8%	Free	7.5%
5208.19.10	Free	Free	Free
5208.19.20	8%	Free	7.5%
5208.21.10	Free	Free	Free
5208.21.90 - 9935.00.00 ²	10%	Free	8.5%
5208.22.10	Free	Free	Free
5208.22.90 - 9935.00.00 ²	10%	Free	8.5%
5208.23.00 - 9935.00.00 ²	10%	Free	8.5%
5208.29.10	Free	Free	Free
5208.29.90 - 9935.00.00 ²	10%	Free	8.5%
5209.11.10	Free	Free	Free
5209.11.20	8%	Free	7.5%
5209.12.10	8%	Free	7.5%
5209.19.20	8%	Free	7.5%
5209.21.10	Free	Free	Free
5209.21.90 - 9935.00.00 ²	10%	Free	8.5%
5209.22.00 - 9935.00.00 ²	10%	Free	8.5%
5209.29.10	Free	Free	Free
5209.29.90 - 9935.00.00 ²	10%	Free	8.5%

Note: CIAT = Canada-Israel Agreement Tariff

1. Source: Revenue Canada.
2. Tariff item No. 9935.00.00 (woven fabrics of cotton, containing 85 percent or more by weight of cotton, excluding denim or unbleached fabrics, of Chapter 52, for use in the manufacture of apparel or apparel accessories) also applies to imports of the subject fabric and reduces the MFN tariff rate from 15 to 10 percent. Two other tariff provisions that reduce the MFN rate to 8 percent could also apply when the subject fabric meets a certain specific description and end use. These are tariff item Nos. 9940.00.00 (jacquard woven fabrics, certified by the exporter that the fabrics were woven on Jacquard looms, of Chapters 51 to 55, for use in the manufacture of apparel) and 9941.00.00 (woven fabrics, other than lining or interlining fabrics, of a weight not exceeding 70 g/m², of Chapters 51 to 55 or of heading No. 58.03, for use in the manufacture of women's or girls' apparel, excluding ski suits or garments of heading No. 62.02).

REPRESENTATIONS

Requester

Doubletex

Doubletex employs about 450 people and is headquartered in Montréal, Quebec. It is Canada's largest fabric converter, importing greige fabrics from around the world for converting at its plants located in Montréal, Toronto, Ontario, and Winnipeg, Manitoba. Doubletex submitted that Consoltex Inc. (Consoltex) does not sell greige fabrics nor does it sell high-twist cotton fabrics that it weaves in Canada. Doubletex stated that the request for tariff relief is for greige fabric of 100 percent cotton for converting. It also argued that greige fabrics for converting and the finished woven polyester fabrics produced by Consoltex are totally different products and claims that polyester finished fabrics and cotton finished fabrics are not substitutable.

In response to arguments made by the Canadian Textiles Institute (CTI), Doubletex submitted that the subject fabric is priced in US currency, which has appreciated considerably against the Canadian currency, and concluded that the devaluations suffered by Asian currencies have had little or no effect on the prices for greige fabrics imported into Canada. Doubletex further submitted that it cannot export its finished fabrics made from the subject fabric to the United States because it imports the subject fabric from countries subject to US quotas.⁶

Doubletex concluded that there is no Canadian supply of greige fabrics and that these fabrics should not be afforded tariff protection. Doubletex claimed that tariff relief on essential inputs would assist it in increasing its business and in better serving its customers with competitively priced fashion fabrics, and would allow it to reduce its costs.

Domestic Producer of Allegedly Substitutable Fabrics

Consoltex

Consoltex is headquartered in Montréal and employs over 500 people. It is the largest Canadian producer of woven man-made fabrics and produces nylon, polyester, polyester/cotton, polyester/nylon, polyester/rayon, nylon/cotton, acetate/rayon and other blends for the apparel market, as well as for the household, industrial and non-apparel markets. Consoltex argued that, since the request in 1995, there have been major changes in the domestic market for Canadian production of high-twist fabrics and that it has invested in equipment and product developments to produce fabrics of high-twist yarns.

Consoltex submitted that it has now established reliable sourcing of high-twist yarns, that it currently produces man-made high-twist fabrics and that it has invested and is investing in further high-twist production based on man-made fibres. Consoltex claimed that, in the recent past, it has made about 50 product developments and that it now has 7 high-twist fabrics in full production and sale. It also submitted that it has 14 products in limited production and sampling. Consoltex stated that these man-made fabrics are woven, dyed and finished at its weaving and finishing plants and that their principal end use is ladies' apparel, such as pants, jackets, blazers, vests and skirts. It maintained that the market response for

6. US authorities treat such finished fabrics as originating in the countries where greige fabrics are sourced.

these fabrics has been strong in the United States and slower in Canada and that the outlook is good for rapid sales growth in both countries.

Consequently, Consoltex did not agree that there is any benefit in removing tariffs for importers while domestic manufacturers are relying on the protection that these tariffs provide to invest in and develop Canadian production.

Domestic Users/Importers of the Subject Fabric

The Tribunal's notice of recommencement of investigation specified that the subject fabric was for use by textile converters only to produce a dyed and finished fabric. Consequently, some parties were concerned that they would be excluded from any tariff relief granted because they import high-twist fabrics, but subcontract the dyeing process.

In light of this fact, the Tribunal's staff requested an opinion from Revenue Canada as to whether importers that subcontract their dyeing operations would be entitled to tariff relief on the subject fabric. Revenue Canada responded in the affirmative, provided the importer is able to verify the specified end use. Confirmation at the time of importation would be in the form of documentary proof, such as end-use certification by the qualified end user of the subject fabric.

Baker Textiles Inc.

Baker Textiles Inc., of Montréal, indicated that tariff relief should be limited to fabrics made only from high-twist yarn and not be granted on all the fabrics classified under the tariff items shown in the notice.

Lubertex Inc.

Lubertex Inc., of Montréal, argued that there should be a reduction in import duties on the subject fabric, but that it should not be limited to Doubletex. The company submitted that it, and many other importers, are also converters that send fabrics out for further processing to commission dyers and printers. It stated that commission dyers and printers have large investments in machinery, are large employers and depend on imports to be viable.

Montreal Fabrics Corp. Ltd.

Montreal Fabrics Corp. Ltd., of Montréal, expressed concern that it would be excluded from any tariff relief granted in this request because it subcontracts its converting activities.

Montreal Fast Print Ltd.

Montreal Fast Print Ltd., of Montréal, submitted that, in principle, it is in favour of the removal of the duty on any fabric which is imported in the greige form and that can be further processed by dyeing, printing, finishing or coating. However, the company did not agree with the removal of the duty on greige fabrics if it is only allowed for Doubletex. It stated that Doubletex is not the only converter in Canada with the equipment to do the dyeing. It argued that other dyers are equally well equipped and would like to import greige cotton fabrics duty free. It further argued that it is in an excellent position to do competitive dyeing and believes that all converters should be able to import the subject fabric duty free.

Other Submissions

CTI

The CTI stated that this request, filed in 1995, was based on opportunities perceived by Doubletex in the “high twist area.” However, the CTI submitted that a major change has occurred in the intervening years and that the production of high-twist fabrics has been re-established in Canada. The CTI argued that this point was acknowledged by the Tribunal in Review No. TA-97-001.⁷ The CTI argued that this fact has largely eliminated the justification for tariff relief advanced in the request.

The CTI stated that Doubletex is already in a position to import the subject fabric at lower duty rates than users of dyed and finished fabrics in the high-twist area. Furthermore, the CTI argued that MFN rates of duty for the subject fabric appear to be lower than those in the United States and, as such, Canadian converters are not at any disadvantage when compared to US mills when competing for US business.

The CTI submitted that investments by Doubletex in new capacity were made while the request was suspended and did not depend on the tariff relief requested in 1995. The CTI also pointed out that, since 1995, there have been massive currency devaluations in Asia, and it assumes that landed prices for Doubletex have declined. With fabric import prices falling, the CTI argued that the pressure on domestic weavers is increasing and tariff removal would exacerbate a bad situation. Accordingly, it submitted that it would be inappropriate to grant the request for duty relief.

OTHER INFORMATION

The Tribunal was informed by DFAIT that Canada maintains quota restraints on woven cotton fabric, finished, imported from the People’s Republic of China and cotton fabric imported from Hong Kong and Taiwan (greige and finished). Accordingly, this coverage includes cotton fabric of the tariff items listed earlier. A bilateral agreement, which provides for this restriction, between Canada and the People’s Republic of China has been in place since 1987. Bilateral agreements between Canada and Hong Kong and with the Taiwan Textile Federation have been in place since 1979.

Revenue Canada stated, in 1995, that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief requested for the subject fabrics.

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 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.

7. *Report to the Minister of Finance: Review of Recommendation Regarding Woven Fabrics Known as “Armani Gabardine,”* February 26, 1998. In the recommendation to the Minister, the Tribunal acknowledged that Consoltex had begun developing, producing and selling fabrics produced from high-twist yarns.

As stated earlier, the original investigation was suspended in 1995, shortly after it began, at the request of Doubletex, which was attempting to find a domestic supplier of identical or substitutable fabrics. After conducting some unsuccessful negotiations with the Dominion Industrial Fabrics Company, Doubletex requested and obtained a recommencement of the investigation in 1998. In doing so, Doubletex alleges that there is no Canadian supply of identical or substitutable fabrics. This position is contested by Consoltex, which claims that it produces finished fabrics that are substitutable for the fabrics produced by Doubletex from the subject fabric. Consoltex argues that it currently produces man-made high-twist fabrics which are woven, dyed and finished at its weaving and finishing plants. Consoltex further argues that granting this request would suppress the prices of these finished fabrics, which would, in turn, cause a reduction in its gross profits.

While it is clear from the evidence that there is no current or expected Canadian production of fabrics identical to or substitutable for the subject fabric (i.e. 100 percent cotton greige high-twist fabric), this, in and of itself, does not automatically mean that the request for tariff relief by Doubletex should be granted.

When it makes a recommendation to the Minister, the Tribunal is guided by the terms of reference, which require that such recommendations maximize net economic gains to Canada. In the present case, Consoltex argues that its sales of man-made high-twist fabrics (i.e. finished fabrics) would be negatively impacted should tariff relief be granted. Thus, the Tribunal needs to determine whether Consoltex produces fabrics which are substitutable for those produced by Doubletex from the subject fabric. This issue of substitutability is not new and is almost always difficult to resolve. In cases where the issue of substitutability has arisen, the Tribunal has considered a number of factors in resolving this issue, including quality, technical composition or description, price, market acceptance, ability to supply and proprietary goods.

While the Tribunal considered all these factors in determining substitutability, the principal consideration in this case was the technical description of the finished fabrics produced by Doubletex versus those produced by Consoltex. In the past, the Tribunal has stated that it finds it difficult to accept claims made by textile producers that a woven fabric is fully substitutable for a nonwoven fabric or that a cotton fabric is substitutable for a polyester blend fabric. In other words, the technical composition and description must generally be in the same category for goods to be fully substitutable. In the present case, the finished fabric samples provided by Consoltex were clearly different in appearance and feel from those made by Doubletex. While the Tribunal is prepared to accept that some of Consoltex's finished fabrics may be somewhat substitutable for the finished fabrics made by Doubletex, there is no evidence on the record to support the conclusion that Consoltex manufactures a wide range of finished fabrics which are 100 percent substitutable for those of Doubletex. Given the composition of the fabrics produced by Consoltex, the Tribunal believes that it is unlikely that these fabrics would be as substitutable for the finished fabrics produced from the subject fabric as Consoltex claims. Accordingly, and in the absence of any evidence to the contrary, the Tribunal concludes that the fabrics produced by Consoltex are not fully substitutable for the finished fabrics made by Doubletex.

The information presented indicates that tariff relief would provide significant benefits⁸ to converters such as Doubletex. In its consideration of the cost of granting duty relief, the Tribunal is aware that Consoltex has estimated that tariff relief would significantly reduce its gross margins.⁹ However, this

8. These amounts cannot be divulged for reasons of confidentiality.

9. *Ibid.*

estimate is based on the assumption that Consoltex produces fabrics which are fully substitutable for the subject fabric. Nevertheless, the Tribunal recognizes that some costs would be incurred should tariff relief be granted. However, in the Tribunal's judgement, these costs would be far outweighed by the benefits that would accrue to domestic converters, such as Doubletex. Even if the Tribunal accepts Consoltex's contention that it produces a broad range of finished fabrics which are fully substitutable for finished fabrics made from the subject fabric, the costs to Consoltex, if tariff relief were granted, would still be substantially lower than the benefits estimated for domestic converters.

In light of the foregoing, the Tribunal concludes that the granting of this request would provide net economic gains to Canada.

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 fabric of 100 percent cotton, unbleached, bleached for dyeing only, of yarns with a twist of 1,050 turns per metre or more in the warp and/or the weft of subheading Nos. 5208.11, 5208.12, 5208.13, 5208.19, 5208.21, 5208.22, 5208.23, 5208.29, 5209.11, 5209.12, 5209.19, 5209.21, 5209.22 and 5209.29, for use by textile converters only to produce a dyed and finished fabric for the apparel industry.

Raynald Guay
Raynald Guay
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Peter F. Thalheimer
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Member