

**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
TRIBAL SPORTSWEAR INC.  
REGARDING  
WOVEN FABRICS OF COTTON**

**AUGUST 24, 1999**

**TRIBAL SPORTSWEAR INC.**

**REQUEST NO. : TR-98-019**

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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, on March 11, 1999, the Tribunal received a request from Tribal Sportswear Inc. (Tribal), of Montréal, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations of certain cotton/spandex woven fabrics for use in the manufacture of women's pants, skirts and shorts. Tribal also asked that its request be handled on an expedited basis on the grounds of critical circumstances.

On April 13, 1999, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation which described the fabrics for which tariff relief was being sought as "woven fabrics of cotton, 3-thread twill, containing 96 percent or more by weight of cotton and 4 percent or less by weight of elastomeric strip, dyed, weighing more than 200 g/m<sup>2</sup>, for use in the manufacture of women's pants, skirts and shorts".

On April 23, 1999, the Tribunal issued an amended notice of commencement of investigation in which the wording used to describe the fabrics for which tariff relief had been requested was modified to "woven fabrics of cotton, 3-thread twill, containing 98 percent by weight of cotton and 2 percent by weight of elastomeric strip, dyed, weighing more than 200 g/m<sup>2</sup>, for use in the manufacture of women's pants, skirts and shorts" (the subject fabrics). The notice was distributed and published in the April 24, 1999, edition of the *Canada Gazette*, Part I.<sup>3</sup>

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of identical or substitutable fabrics. Questionnaires were also sent to potential users and importers of the subject fabrics. A letter and a sample of the subject fabrics were sent to the Department of National Revenue (Revenue Canada) requesting its advice as to the tariff classification of the subject fabrics and an analysis of the sample's technical characteristics. In addition, the Department of Foreign Affairs and International Trade was asked to provide current information on any quantitative import restrictions on the subject fabrics, and the Department of Industry was informed of the request and asked to provide any relevant comments. The Department of Finance was also informed of the request.

The notice of commencement of investigation also indicated that the Tribunal was prepared to conduct an expedited investigation, unless comments received from interested parties demonstrated that normal time lines were warranted. On April 26, 1999, the Tribunal received a letter sent on behalf of Doubletex, a producer of fabrics alleged to be identical to or substitutable for the subject fabrics, which stated that Doubletex opposed both the request for tariff relief and the request for an expedited investigation. On May 4, 1999, Doubletex submitted a response to the Tribunal's domestic producer's questionnaire and samples of fabrics alleged to be substitutable for the subject fabrics. In light of the foregoing, the Tribunal

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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 (4th Supp.), c. 47.
  3. Vol. 133, No. 17 at 1097.

decided that the time lines for an expedited investigation would not apply, and it established new time lines for the remainder of the investigation.

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

A public hearing was not held for this investigation.

## **PRODUCT INFORMATION**

The subject fabrics are 3-thread twill woven fabrics, comprised of 98 percent cotton and 2 percent spandex,<sup>4</sup> and are used in the manufacture of women's pants, skirts and shorts. According to Tribal, the addition of spandex gives a traditional cotton fabric added stretch and offers modern easy wear and easy care.

Revenue Canada advised the Tribunal that the subject fabrics were classified under tariff item No. 5209.32.00 of the schedule to the *Customs Tariff*<sup>5</sup> and are presently dutiable at 14.5 percent *ad valorem* under the MFN tariff, at 7.0 percent *ad valorem* under the Chile tariff, at 6.5 percent *ad valorem* under the Mexico tariff, and are duty free under the US tariff and the Canada-Israel Agreement tariff.

While properly classified under tariff item No. 5209.32.00, the subject fabrics can be imported at a lesser rate of duty under tariff item No. 9935.00.00, i.e. woven fabrics of cotton (excluding denim or unbleached fabrics), containing 85 percent or more by weight of cotton, of Chapter 52, for use in the manufacture of apparel or apparel accessories. As of January 1, 1999, fabrics classified under tariff item No. 9935.00.00 are dutiable at 10 percent *ad valorem* under the MFN tariff, at 8 percent *ad valorem* under the Mexico tariff and are duty free under the Chile tariff, the US tariff and the Canada-Israel Agreement tariff.

## **REPRESENTATIONS**

### **Requester**

#### Tribal

Tribal, located in Montréal, has been in business for 30 years and is a manufacturer of women's pants, blazers, skirts and shorts. According to Tribal, there are no Canadian producers of identical or substitutable fabrics.

Tribal submitted that there are more than 2,000 apparel manufacturers in Canada, a majority of which employ fewer than 20 people. Tribal also maintained that many Canadian manufacturers are located in the moderate price segment of the market and that, in order to compete with other apparel manufacturers and finished apparel importers in that segment, it has made considerable efforts to establish a unique position in the market for women's fashion apparel.

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4. "Spandex" is a generic term for polyurethane textile materials.

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

Tribal alleged that there are no substitutable fabrics made in Canada, much less competitively priced ones, that would satisfy the spring and summer fashion trends. Tribal noted that, although the issue of substitutability is elusive, certain factors are usually present that allow comparisons to be made between domestic and imported fabrics. Tribal pointed out that the subject fabrics are specialty 3-thread twill woven fabrics, comprised of 98 percent cotton and 2 percent spandex. Tribal maintained that the fabrics that are offered for sale domestically are either polyester/spandex or cotton/polyester, which are sold to different market segments. Tribal submitted that, while these fabrics might be acceptable for certain applications, they do not offer the requisite natural look, wear, hand, drape and comfort for Tribal's line of women's wear and are in a different product category from that of the subject fabrics.

Tribal maintained that it is highly unlikely that apparel made of polyester/spandex, cotton/polyester or 100 percent cotton would compete directly with the subject fabrics in the same distribution channels. Tribal took strong objection to any claims by domestic manufacturers that the consumer, much less a quality- and cost-conscious retailer, would confuse garments made with those fabrics and garments made by Tribal with the subject fabrics.

Tribal expressed surprise that Doubletex, a converter that imports greige fabrics, would oppose the request when Consoltex Inc. (Consoltex), a fully integrated fabric producer, did not. Tribal argued that the Doubletex cotton fabrics and "Viscount" polyester/cotton fabrics are not identical to or substitutable for the subject fabrics, and are much less competitive in commercial terms or accepted in the market. Tribal further argued that there is widespread acceptance of the stretch, comfort and fit characteristics that come from a fabric made of cotton and spandex. The trend toward these characteristics, according to Tribal, is irrefutable, and it will continue into the 2000 spring/summer season, notwithstanding what the domestic textile industry has to say in this regard.

With regard to the allegedly identical fabrics currently being developed by Doubletex, Tribal submitted that this is an admission that Doubletex cotton fabrics and polyester/cotton fabrics are not substitutable for the subject fabrics. Tribal argued that the greige fabrics imported by Doubletex should not even be regarded as domestic textile inputs within the terms of the textile tariff reference. Tribal further argued that Doubletex has experienced technical problems in the production of the developmental fabric, which may still not be fully resolved and which put in doubt Doubletex's ability to deliver a fabric that is acceptable to its customers.

Tribal disputed Doubletex's claim that it is a considerable value-added contributor to the production of apparel. Tribal argued that Doubletex's added value is no different from that of any other fabric and apparel manufacturer and that, based on Tribal's sourcing and buying experience, Doubletex's added value is considerably lower than it claims.

Tribal submitted that the Tribunal is required to take careful account, in its analysis, of the commercial availability of directly competing textile inputs and market acceptance. Tribal further submitted that it does not appear that assessing potential opportunities and possible developments flowing out of new investments, as argued by Doubletex, has much place in the Tribunal's analysis.

The benefits of removing the tariff, according to Tribal, are directly measurable in terms of the reduction in the landed costs of the subject fabrics not only for Tribal but for other potential users of similar fabrics. In addition, Tribal submitted that there will be more production placed with subcontractors and greater sales of other products in the company's line of women's wear, should tariff relief be granted. It

further indicated that indirect benefits would also arise through spin-off activities because of production efficiencies, longer production runs and lower unit costs of production.

Tribal further submitted that, in order to maximize economic gains, tariff relief should be provided on the subject fabrics or, in the alternative, on the subject fabrics and on the greige fabrics imported by Doubletex.

### **Domestic Users and Importers of the Subject Fabrics**

#### Lana Lee Fashions Inc.

Lana Lee Fashions Inc. submitted that it did not complete the questionnaire because it used the subject fabrics only sporadically. However, it did state that it was in favour of duty removal for any desirable fabrics not produced in Canada. It further submitted that the question of substitutability is irrelevant, since manufacturers must meet consumers' and retailers' requirements or lose sales to imports. It stated that its position has always been that Canadian mills get preference when it places an order and that, if they could produce a fabric containing 98 percent cotton and 2 percent spandex that was fairly equivalent in quality and price to fabrics produced in Asia, Canadian mills would get the business.

#### Hemisphere Productions Inc.

Hemisphere Productions Inc. did not respond to the Tribunal's questionnaire, but indicated that it did not oppose the request for tariff relief. It stated that any tariff relief on the subject fabrics would benefit the apparel industry because it would become more competitive in the export market or would allow affordable fashions to be brought into the domestic market.

### **Domestic Producers of Allegedly Identical or Substitutable Fabrics**

#### Doubletex

Doubletex is Canada's largest fabric converting mill. It imports a wide range of greige fabrics from around the world for converting in its three Canadian plants located in Montréal, Toronto, Ontario, and Winnipeg, Manitoba. The finished fabrics produced by Doubletex are often customized to the specific needs of its apparel and home furnishings customers across Canada and the United States. An increasing part of its business is the conversion of more technical fabrics, including man-made and blended fabrics of high-twist yarns, and stretch fabrics.

Doubletex submitted that it opposed the request and that it currently produces substitutable fabrics, such as cotton fabrics, which have the same relaxed hand and rack appearance as the subject fabrics, and the "Viscount" fabric, which is a stretch or comfort fabric designed for the same end uses as those specified in the request. Doubletex also submitted that it has been developing a cotton/spandex fabric for over a year and that this fabric would be ready for sale in the next few days. Doubletex further alleged that, in the past year, it has invested significantly in equipment precisely designed for this kind of fabric, as well as in research and development. It further alleged that this new fabric is identical in appearance, wearability and price to the subject fabrics. Doubletex also argued that, in its experience, customers will shift from its fabrics to imported fabrics even if the imported fabrics are considerably more expensive than the domestic alternatives.

Doubletex argued that its cotton/spandex fabric will be wider than the subject fabrics. According to Doubletex, the cutting and yield advantages of their fabric will allow its customers to produce more garments from every square yard of fabric put into production.

Doubletex submitted that it considers its “Viscount” stretch fabric to be a stretch or comfort fabric designed for the same end uses as those specified in the request and claimed that it is substitutable for the subject fabrics.

Doubletex stated that comfort fabrics are defined by many factors, including breathability and permeability, and submitted that coating or finishing sometimes provides these characteristics. Doubletex indicated that it has a special patented process called “H2 Out”, which is a heat-treated coating that it applies to fabrics to give them breathability and comfort. Doubletex argued that fabrics with “memory” are generally considered to be fabrics with some stretch in them. According to Doubletex, there is no requirement to employ an elastomeric strip in the fabric to produce a fabric with “memory” and that a true stretch effect can be achieved with other types of yarns (e.g. texturized polyester). It submitted that it currently serves the sportswear and active wear market with “comfort”, “natural” and “memory” fabrics. Doubletex argued that it has been serving this market for many years and claimed that it did not enter this market on the eve of Tribal’s request.

Doubletex submitted that it takes strong exception to claims by Tribal and the Canadian Apparel Federation (CAF) that its added value is unimportant and non-equivalent. Doubletex argued that it adds from 95 percent to 150 percent of Canadian value to imported greige fabrics and employs over 450 Canadians directly and over 1,000 Canadians indirectly.

Doubletex alleged that it can supply the Canadian market. Furthermore, it indicated that cotton/spandex fabrics are available from a significant number of US mills and other large textile mills from around the world and that they are relatively basic fabrics. Doubletex further stated that it cannot source cotton/spandex greige fabrics on a duty-free basis.

Finally, Doubletex alleged that the overall cost to Doubletex of tariff relief being granted would be substantial. Doubletex maintained that the business impacts of tariff relief being granted could be significant because it will be forced to lower its prices and its margins will be squeezed.

#### Consoltex

Consoltex stated that it would not be participating in this investigation.

#### Cleyn and Tinker Inc.

Cleyn and Tinker Inc. indicated that it had no interest in the case and would not be submitting a response to the questionnaire.

### **Other Submissions**

#### Canadian Textiles Institute

The Canadian Textiles Institute (CTI) disagreed with Tribal’s statement that no Canadian fabrics could be used by Tribal for the spring/summer fashion season without causing market disruption to Tribal. The CTI also disputed Tribal’s claim that there is no domestic production of identical fabrics.

The CTI submitted that it is doubtful that much of the relief that Tribal is requesting will reach retailers or consumers. According to the CTI, the fact that Tribal mentions the difficulty of passing on cost increases suggests that the offshore supplier may be pressing for price increases or that exchange rates will increase the landed cost.

The CTI stated that Tribal's statement that the cost of tariff removal would be far outweighed by the benefits is unsupported by the evidence. Furthermore, the CTI argued that Tribal's allegations that consumers allegedly look to natural fibres, not synthetics, are individual views on the US market gleaned from the US trade press. The CTI also submitted that Tribal has not supported these allegations with quantitative data on the US or Canadian market. It added that the fact that some consumers may indeed prefer garments made from cotton/spandex fabrics to garments made from other fabrics does not alter the fact that cotton/spandex fabrics compete with other fabrics in the "sportswear marketplace".

The CTI argued that the Doubletex cotton fabrics, for which technical data were provided, are susceptible to displacement by imported cotton/spandex fabrics at significant price premiums. It further alleged that, whatever the actual premiums may be, they would be radically changed if the tariff were removed on the subject fabrics.

The CTI did not agree with the proposition that the incorporation of 2 percent spandex in a woven cotton fabric distinguishes the fabric to the point where it does not compete with spandex-free fabrics in the fabric market. It argued that, if that were true, retailers would be presenting cotton/spandex sportswear items by themselves, on a separate rack, and not presenting cotton, cotton/spandex, polyester/rayon, polyester and polyester/spandex together.

The CTI argued that removal of the tariff would be damaging to the existing production of 100 percent cotton fabrics and that, therefore, the tariff should not be removed. It also submitted that the comfort/stretch property, the only distinctive property of the subject fabrics, is provided by a number of domestic products. According to the CTI, Tribal itself provided evidence of comfort/stretch fabrics made by Consoltex from man-made fibres with spandex. Accordingly, for any retailer or consumer who considers comfort/stretch important, the existence of the Consoltex fabrics is significant.

The CTI also argued that the Doubletex "Viscount" fabric has a 100 percent cotton warp and is a weft-stretch fabric, like the subject fabrics, which competes directly with the subject fabrics. The CTI submitted that tariff removal would radically change the relationship between the prices of the two fabrics.

According to the CTI, the Revenue Canada laboratory report confirms that the new Doubletex fabric is essentially identical to the subject fabrics. To remove the tariff would damage the products made and sold by Doubletex and would adversely affect the products of other domestic suppliers that have not come forward as interested parties.

The CTI disagreed that any widening of consumer selection, style or fashion apparel would flow from the requested tariff concession and submitted that, even with the tariff in place, Tribal successfully uses the subject fabrics in quantities that are large in absolute terms and in relation to its total fabric usage.

On the subject of benefits, the CTI argued that, even if the Tribunal chose to believe that tariff savings would not be captured by the foreign supplier and would be passed on by Tribal entirely to retailers, it would be necessary to exclude all sales by Tribal to foreign retailers from any calculation of benefits to



Canada. Furthermore, the CTI stated that Tribal's allegation that the cost of tariff removal would be far outweighed by the benefits is unsupported by the evidence.

The CTI also argued that removal of the tariff, in the pre-production period of a new fabric, on the grounds that "identical or substitutable" fabrics were not available from domestic production, would result in a systematic depletion of the growth opportunities which are indispensable to survival and renewal in textile production.

The CTI asked that the Tribunal recognize that textile manufacturers serving the fast-moving world of fashion cannot be expected to time their fabric projects perfectly. Accordingly, the CTI submitted that textile producers have the right to be late in deciding to manufacture any specific fabric.

Finally, the CTI urged the Tribunal to recommend no change in the applicable tariff.

#### Canadian Apparel Manufacturers Institute

The Canadian Apparel Manufacturers Institute filed a submission on behalf of members of CAF. CAF fully supports Tribal's position that identical and substitutable fabrics are not available from domestic textile manufacturers and that tariff relief should be granted on the subject fabrics.

CAF noted that Consoltex is not participating in this investigation. Furthermore, CAF argued that Doubletex does understand that its cotton fabrics and its cotton/polyester fabrics are not substitutable for the subject fabrics, otherwise it would have been selling into this casual wear niche and have historical sales rather than relying on future potential.

CAF noted that it is surprising that, after being asked whether it made a substitutable or identical fabric, Doubletex came up with a new fabric which it made confidential and unavailable to the public. CAF alleged that Doubletex, recognizing that it can block tariff relief, found a greige version of the fabric, had it finished in Canada and held it up as Canadian made. According to CAF, Doubletex then took the position that the subject fabrics, brought in at some unknown price, compete with its so-called new offering.<sup>6</sup>

CAF asked if there was evidence on the record to support Doubletex's contention that it is capable of producing a substitutable or identical fabric. It further questioned how the Tribunal would assess the cost impact on a product that has no sales history and no guarantees of success in the marketplace. CAF questioned the alleged effects on Doubletex, when it appears that it was totally uninvolved in these fabrics just a few months ago. CAF further argued that domestic textile manufacturers and converters will continue to point to potential competitive problems and opportunity costs as a means by which to protect areas in which they might want to do business.

CAF stated that apparel producers, such as Tribal, are forced to react very quickly to changes in consumer tastes and respond to these pressures and other related demands of the marketplace. CAF argued that, if textile manufacturers are going to continue to argue that technically different fabrics are substitutable, apparel producers will be deprived of benefits during the investigation or, if they are ultimately successful, their benefits will be unjustly delayed.

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6. Doubletex stated that, in its experience, if the imported fabrics are 30 percent or less more expensive, people will shift from its fabrics to imported 100 percent spandex fabrics or blends.

CAF submitted that, in reaching a conclusion in favour of the domestic producer, the Tribunal would have to be in a position where it is convinced that Doubletex would be capable of immediately delivering and guaranteeing supply in commercial quantities, with appropriate quality and market acceptance, and at a price that would be competitive with the subject fabrics. However, CAF commented that there is no clear evidence to this effect.

CAF alleged that domestic manufacturers have not been and are not presently able to satisfy the market demand for the subject fabrics with the relevant technical features, much less demonstrate a *bona fide* ability to supply fabrics in the future.

It is CAF's view that it is only fair and reasonable to grant tariff relief on the subject fabrics until such time as quality, commercial supply and price are considerably more predictable.

CAF submitted that it is not acceptable for domestic textile companies to insert themselves between *bona fide* current production and apparel producers' requests for tariff relief with their potential opportunities on unavailable fabrics and, in doing so, stand in the way of relief. According to CAF, allowing such a precedent would allow start-up and developmental situations to prevail, which would override the Tribunal's terms of reference for investigating requests for tariff relief.

CAF argued that, while the Tribunal has, in the past, allowed textile producers to take sometimes exaggerated positions on relief and has safeguarded their investments or their claims of potential production coming on stream, this gives no recognition to the fact that the market acceptance of any developmental fabric is uncertain. According to CAF, it is extremely unrealistic to presume that similar fabrics will be automatically well received by the market.

### **OTHER INFORMATION**

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada does maintain quota restraints on woven cotton fabric, finished (subcategory 32.2), imported from the People's Republic of China, Hong Kong and Taiwan. Accordingly, this coverage includes cotton fabric of subheading No. 5209.32.00. The bilateral agreement, which provides for this restriction, between the Government of Canada and the Government of the People's Republic of China, has been in place since 1987. The bilateral agreements between the Government of Canada and the Government of Hong Kong and the Taiwan Textile Federation have been in place since 1979.

DFAIT also indicated that it will 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. Ex-quota treatment will be granted only 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.

Revenue Canada indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief.

### **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, any recommendation by the Tribunal for tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

Tribal's request covers specific cotton fabrics, i.e. 3-thread twill woven fabrics containing 98 percent by weight of cotton and 2 percent by weight of spandex, dyed and weighing more than 200 g/m<sup>2</sup>. These fabrics are used in the manufacture of women's pants, skirts and shorts. Tribal claimed that the fabrics that are sold in the Canadian marketplace, allegedly in competition with the subject fabrics, are either polyester/spandex, cotton/polyester or 100 percent cotton fabrics and are unacceptable to Tribal. According to Tribal, these allegedly substitutable fabrics are sold to different market segments and are in a different product category from that of the subject fabrics. Tribal further argued that its customers are very knowledgeable with regard to their needs and that there is a widespread acceptance of the stretch, comfort and fit characteristics that come from a fabric made of cotton and spandex. In other words, in this market niche, Tribal claimed that a cotton/spandex fabric has no substitutes.

Doubletex and the CTI opposed the request, arguing that Doubletex currently produces and sells 100 percent cotton fabrics and fabrics containing 55 percent cotton and 45 percent polyester that are substitutable for the subject fabrics and that it is also in the process of putting on the market a cotton/spandex fabric that is identical to the subject fabrics.<sup>7</sup>

In determining whether a substitutable fabric is produced domestically, the Tribunal is guided by factors such as the technical description of the fabric, its quality, its price and its market acceptance. If these factors appear to be comparable, the Tribunal then considers the issue of availability of supply before concluding its analysis. Furthermore, as the Tribunal has stated in the past, "the fashion industry operates on a lower degree of substitutability and, therefore, searches for, and insists on, new fabrics which are, or are soon expected to be, demanded by consumers."<sup>8</sup> In other words, the Tribunal is of the view that the fashion industry attaches considerable importance to even small differences between fabrics which would allow it to offer distinctive new products.

In the present case, Doubletex has identified certain cotton and cotton/polyester fabrics as substitutable for the subject fabrics. The evidence shows that these fabrics do not contain cotton **and** spandex. While they have been described as "stretch fabrics" by Doubletex, these fabrics do not have the full characteristics of the subject fabrics, i.e. the comfort and breathability of cotton and the predictable stretch factor provided by spandex.<sup>9</sup> The Tribunal accepts Tribal's argument that the consumer wants garments that have not only some give in them but also stretch and return to their normal shape. In the market segment that Tribal supplies, the Tribunal believes that the cotton and polyester/cotton fabrics produced by Doubletex are not substitutable for the subject fabrics.

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7. A sample of this developmental fabric was submitted to the Tribunal. Doubletex requested that this sample be treated as a confidential exhibit. The Tribunal agreed, but requested that the sample be made available to the parties to the investigation, as long as an undertaking of confidentiality not to disclose the sample to other parties was submitted to and accepted by the Tribunal. Only Tribal was provided with a confidential sample.

8. *Château Stores of Canada* (September 19, 1995), TR-94-011 and TR-94-019 (C.I.T.T.) at 7.

9. According to Tribal, customers and consumers alike will not buy a cotton/spandex fabric if it falls short of the following requirements: the shrinkage can be no more than 3 percent in the warp and 4 percent in the weft, and stretch recovery must be 85 percent.

Turning to the cotton/spandex fabric being developed by Doubletex, the Tribunal notes that its very development suggests that Doubletex identified, for this fabric, a market which is different from the market for its cotton and cotton/polyester fabrics. The Tribunal further notes that the measurements carried out by Revenue Canada's laboratory suggest that the developmental fabric is very close, if not identical, to the subject fabrics. For the Tribunal, the question then becomes one of market acceptance and the ability by Doubletex to supply the market with this developmental fabric.

In a number of instances,<sup>10</sup> the Tribunal has stated that it is the responsibility of the domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable fabrics. While Doubletex has indicated that it has expended efforts to develop this new fabric, has invested in new equipment and is seeking customers, the fact remains that this fabric is not yet offered to the market. The Tribunal has difficulty in accepting Doubletex's assertions that the new cotton/spandex fabric currently under development will be available to the marketplace in reasonable commercial quantities or at acceptable prices in the near future. Doubletex has not provided evidence in this case to support a conclusion of imminent production or potential to supply the market with the new product. A conclusion of foreseeable and imminent production could be based on such evidence as orders on hand, actual sales, detailed results of trial runs by both the producer and end user or, in the absence of the foregoing, a feasibility study detailing capital appropriation, production and marketing plans for the new products. Nevertheless, if tariff relief is granted, the Tribunal would be prepared to consider a request for a review in the future, whenever Doubletex is in a position to provide evidence that it is able to produce and sell commercial quantities of fabrics that are identical to or substitutable for the subject fabrics.

The Tribunal sees little cost in granting the tariff relief requested by Tribal. As explained before, the Tribunal does not view the cotton and cotton/polyester fabrics produced by Doubletex as being substitutable for the subject fabrics and, as such, cannot attribute any costs on account of those fabrics to the assessment of the net economic gains to Canada from the requested tariff relief. The Tribunal also notes that Consoltex, a fully integrated textile producer of man-made and blended fabrics, has chosen not to participate in the investigation. With regard to the cotton/spandex fabric currently being developed by Doubletex, the Tribunal notes that market acceptance and Doubletex's ability to supply have not, as yet, been demonstrated. Accordingly, the Tribunal cannot attribute any costs that might be incurred by Doubletex to the assessment of the net economic gains to Canada from the requested tariff relief.

Granting tariff relief will provide a yearly benefit to Tribal and other users of the subject fabrics estimated at more than \$200,000. Tariff relief should also result in greater production and sales and in indirect benefits, such as longer production runs and lower unit costs of production.

Finally, concerning the issue of whether tariff relief should also be granted on the greige version of the subject fabrics, the Tribunal is of the view that, consistent with its previous recommendations, this should not occur in the absence of a separate investigation. However, if, at some time in the future, Doubletex were in a position to file a properly documented request for tariff relief on the greige fabric used to produce identical or substitutable fabrics, the Tribunal would be prepared to consider an expedited investigation of that request.

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10. See, for example, *Camp Mate* (June 10, 1996), TR-95-051 (C.I.T.T.); *Lady Americana Sleep Products* (February 12, 1997), TR-95-064 and TR-95-065 (C.I.T.T.); *Cambridge Industries* (February 12, 1999), TR-98-001 (C.I.T.T.); *Helly Hansen Canada* (March 19, 1999), TR-97-015, TR-97-016 and TR-97-020 (C.I.T.T.); and *Jones Apparel Group Canada* (July 8, 1999), TR-98-017 (C.I.T.T.).

**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 of cotton, 3-thread twill, containing 98 percent by weight of cotton and 2 percent by weight of elastomeric strip, dyed, weighing more than 200 g/m<sup>2</sup>, of subheading No. 5209.32, for use in the manufacture of women's pants, skirts and shorts.

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