



**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
WESTERN GLOVE WORKS LTD.  
REGARDING  
CERTAIN WOVEN FABRICS OF COTTON**

**FEBRUARY 4, 2000**

**WESTERN GLOVE WORKS LTD.**

**REQUEST NO.: TR-99-003**

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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 with respect to those requests to the Minister.

Pursuant to the Minister's reference, on June 17, 1999, the Tribunal received a request from Western Glove Works Ltd. (Western Glove), of Winnipeg, Manitoba, for the removal, for an indeterminate period of time, of the customs duty on importations of certain woven fabrics of cotton for use in the manufacture of trousers, shorts, overalls, skirts and jackets.

On July 26, 1999, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation which was distributed and published in the August 7, 1999, edition of the *Canada Gazette*, Part I.<sup>2</sup> The notice described the fabrics for which tariff relief was being sought as "woven fabrics, dyed, solely of cotton, either plain or 3-thread or 4-thread twill weave, weighing 230 g/m<sup>2</sup> or more but not exceeding 310 g/m<sup>2</sup>, of tariff item No. 5209.31.90 or 5209.32.00, for use in the manufacture of trousers, shorts, overalls, skirts and jackets" (the subject fabrics).

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. 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) (now Canada Customs and Revenue Agency) 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 (DFAIT) 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.

A staff investigation report, summarizing the information received from these departments, Western Glove 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 woven fabrics of cotton, either plain or with a 3-thread or 4-thread twill weave, and are used in the manufacture of trousers, shorts, overalls, skirts and jackets.

Revenue Canada advised the Tribunal that the subject fabrics are classified under tariff item Nos. 5209.31.90 and 5209.32.00 and are presently dutiable at 14.5 percent *ad valorem* under the MFN tariff, at 6.5 percent *ad valorem* under the Mexico tariff and at 7.0 percent *ad valorem* under the Chile tariff and are duty-free under the U.S. tariff and the Canada-Israel Agreement tariff.

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1. R.S.C. 1985 (4th Supp.), c. 47.  
2. C. Gaz. 1999.I.2291.

While properly classified under tariff item Nos. 5209.31.90 and 5209.32.00, the subject fabrics can be imported at a lesser rate of duty under tariff item No. 9935.00.00, which covers “woven fabrics of cotton (excluding denim or unbleached fabrics), containing 85% or more by weight of cotton, of Chapter 52, for use in the manufacture of apparel or apparel accessories”. As of January 1, 1999, the MFN rate under tariff item No. 9935.00.00 is 10 percent and will remain unchanged in the year 2000.

## **REPRESENTATIONS**

### **Requester**

#### Western Glove

Western Glove, founded in 1921, claims to be one of Canada’s largest full-service manufacturers of jeans and casual wear for men, women and children. It serves markets in North America and abroad.

Western Glove submitted that it requested tariff relief because no suitable identical or substitutable finished fabrics, produced domestically, can be found in the marketplace and alleged that identical or substitutable fabrics are much higher in price, that delivery times are longer and that the volume required to satisfy its production needs cannot be met domestically. According to Western Glove, garment manufacturers must have the right look at the right time, along with competitive pricing, in order to provide the required value to the customer.

Western Glove stated that it surveyed major domestic fabric producers, inquiring as to whether identical or substitutable fabrics were being produced domestically. According to Western Glove, the term “domestic” is defined by it and Canadian textile manufacturers as being “fabric of domestic production, domestic origin and *NAFTA* applicable”.<sup>3</sup> Western Glove submitted that two of the companies that responded to its survey of potential domestic suppliers indicated that they had fabrics that were available; however, the fabrics did not meet Western Glove’s definition of “domestic”. Western Glove stated that a third response indicated that substitutable greige was available, but that additional production time and money would have to be spent by Western Glove in order to generate products similar to the subject fabrics. Furthermore, with respect to substitutable greige, it stated that its inquiries were for finished products, not greige.

Western Glove submitted that, as a domestic garment manufacturer, and notwithstanding the tariffs that apply to such imports, it must compete successfully with imports of finished garments, which benefit from a combination of lower fabric and labour costs. Western Glove argued that the application of tariffs to the subject fabrics increases the unit costs of its domestic production which, combined with selling price pressure introduced by competing imported finished garments, create an inherent domestic manufacturing disincentive, especially regarding, but not limited to, garments being sold into the domestic market. According to Western Glove, the elimination of the tariffs would result in a meaningful reduction in unit production costs that would justify a continuation of domestic production of such garments and that would create improved opportunities for expanded production. Western Glove submitted that the positive effect of such tariff elimination on Canadian employment would be to preserve jobs and create new employment opportunities, that it seeks to maintain its share of the Canadian market in the apparel industry, and that it aspires to expand its export business.

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3. To be “*NAFTA*-applicable or -qualified”, the greige fabric must have been produced totally in *NAFTA* countries.

Western Glove submitted that it imports the subject fabrics from non-*NAFTA* countries because it cannot reasonably source them domestically and that the duty on the subject fabrics adds significantly to the cost of the finished garments. According to Western Glove, global competition restricts its ability to pass on these cost increases to its customers because they can always elect to buy cheaper imported finished garments. It further alleged that its margins have decreased, resulting in fewer funds being available to hire additional production personnel, to increase investment in capital equipment or to finance any increase in business.

Western Glove stated that, prior to January 1, 1996, it was possible to recover at least a portion of the duty on the subject fabrics on exports to the United States, but that, since that date, such duty recoveries have been subject to the so-called “lesser than” rule, which means that the recoveries have been limited to the lesser of the duty paid on the subject fabrics and the duty applicable to the garments being exported to the United States. It further stated that, inasmuch as the duty now applicable to goods being exported to the United States is zero, none of the duty paid is recoverable under the current duty drawback regime.

Western Glove alleged that the products offered by the domestic industry are not made with “ring-spun”<sup>4</sup> yarns, a feature that Western Glove claims is necessary for it to differentiate its garments in its segment of the market. Western Glove also argued that the domestic industry’s products are neither microsanded<sup>5</sup> nor continuous dyed,<sup>6</sup> as per its specifications.

With regard to the domestic industry’s argument of intended production, Western Glove referred to the Tribunal’s decision in Request No. TR-98-019<sup>7</sup> in which the Tribunal states that it is the responsibility of domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable fabrics. Furthermore, Western Glove argued that willingness to supply does not constitute ability to supply and that the domestic industry has not demonstrated the ability to finish imported or domestically produced greige to Western Glove’s specifications. Regarding the submission of DIFCO Performance Fabrics Inc. (DIFCO) that a predecessor company, Dominion Textiles, produced significant quantities of identical twill, Western Glove stated that it was not interested in a predecessor company’s capacity.

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

#### Richlu Sportswear (Richlu)

Richlu submitted that it did not complete the questionnaire because it does not currently use the subject fabrics. However, it did support the request on the basis that, in the future, it might use this “category” of fabric. It further submitted that it has been its experience that the domestic fabric industry cannot always easily accommodate the needs of domestic manufacturers, citing, as examples, long lead times, high minimum order quantities, non-competitive prices and limited supply.

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4. According to Western Glove, ring spinning produces stronger yarns than does open-ended spinning and is economical for finer counts.
  5. Microsanding gives the fabric a slightly softer feel.
  6. According to Western Glove, continuous dyeing provides a distinct saving in time, labour and expense, and generally the dyeing is more uniform.
  7. *Tribal Sportswear Inc.* (24 August 1999).

R.G.R. Sportswear Inc. (RGR)

RGR stated that it had not been successful in sourcing identical or substitutable fabrics domestically and, therefore, did not oppose the request for tariff relief.

**Domestic Producers of Allegedly Identical or Substitutable Fabrics**Doubletex Inc. (Doubletex)

Doubletex claims to be Canada's largest fabric converting mill. It imports a wide range of greige fabrics from around the world for conversion in its three Canadian plants located in Montréal, Quebec, Toronto, Ontario, and Winnipeg. 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.

Doubletex opposed the request for tariff relief, arguing that it makes and sells fabrics, with the same end uses as those of the subject fabrics, that are identical to or substitutable for the subject fabrics. It also submitted that fabric prices continue to be depressed and that, therefore, it did not believe that the tariff should be eliminated.

Doubletex submitted that it is willing to produce both the canvas and the twill fabrics, as specified by Western Glove, from offshore or *NAFTA* greige fabrics. Doubletex also alleged that it requires no further investment to produce these goods and that it has excess capacity. It submitted that it produces six fabrics that are substitutable for the subject fabrics and alleged that four of these fabrics are identical to the subject fabrics.<sup>8</sup> Doubletex also alleged that its "Sandlewood" fabric was microsanded.

Doubletex submitted that its domestic price included a number of services and costs not included in the landed import price of the subject fabrics.

Consoltex Inc. (Consoltex)

Although Consoltex provided limited information on some of its products, it did not complete a questionnaire and did not participate in this request.

J.L. de Ball Canada Inc. (de Ball)

De Ball indicated that it did not produce fabrics identical to or substitutable for those described in the request.

DIFCO

DIFCO is a manufacturer of performance fabrics for a broad range of industrial applications and a narrower range of apparel applications. DIFCO opposed the request and submitted that it is equipped and willing to supply greige fabrics designed for conversion to *NAFTA*-origin fabrics identical to the subject

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8. These fabrics are "Diego", "Sandlewood", "Cotton Twill", "Driftwood", "Duradrill" and "Monarch". The first four of these are alleged to be identical to the subject fabrics and were analysed by Revenue Canada's laboratory. All four of these fabrics were found to be a twill weave, and one, "Sandlewood", was abraded (microsanded).

fabrics.<sup>9</sup> Although it does not currently make fabrics identical to or substitutable for the subject fabrics, DIFCO alleged that significant amounts of its sales would be affected should tariff relief be granted.

DIFCO alleged that, from the 1960s to the 1990s, its predecessor, Dominion Textiles, produced in excess of 50 million linear metres of an 8.3-ounce VD 175 twill fabric and that Western Glove was a purchaser of this product. According to DIFCO, the same plant would be used to produce a similar twill fabric that would meet Western Glove's current requirements. DIFCO alleged that the only difference between these two fabrics would be that its current fabrics are of a higher quality because of the significant investments in its Magog, Quebec, facility over the last five years. DIFCO also alleged that it has the yarn technology in place at Magog to produce the canvas construction with ring-spun yarns.

### **Position of Other Interested Parties**

#### Canadian Textiles Institute (CTI)

The CTI opposed the request for tariff relief arguing that fabrics identical to or substitutable for the subject fabrics were available from domestic production. It also submitted that, if Western Glove does not accept fabrics from the domestic industry's current product range as substitutable for imports, the domestic industry is ready and able to supply identical fabrics made from offshore greige fabrics. Furthermore, the CTI submitted that, if Western Glove has a genuine interest in *NAFTA*-qualified fabrics for use in apparel exports, the domestic industry can supply identical fabrics that are *NAFTA*-qualified and made in Montréal from domestic greige.

The CTI argued that Doubletex's price includes a number of services and costs not included in the landed import price<sup>10</sup> and that, therefore, Western Glove's allegations that domestic fabrics are higher-priced are not valid. It also submitted that there is no evidence to support Western Glove's allegations that delivery times are longer for domestic production.

The CTI indicated that Doubletex's submission clearly shows that it has sufficient capacity to satisfy any foreseeable demand for identical or substitutable fabrics and that Doubletex makes and sells substitutable fabrics in substantial volumes. According to the CTI, Doubletex is ready to supply identical fabrics from imported greige (non-*NAFTA*-qualified) fabrics or from greige fabrics made in Canada (*NAFTA*-qualified). It argued that Doubletex, in combination with DIFCO, can supply fabrics which are "*NAFTA*-qualified", whereas Pakistan and Hong Kong cannot. The CTI also pointed out that Western Glove can source the subject fabrics, *NAFTA*-qualified and duty-free, from the United States.

The CTI submitted that Doubletex is being compelled to sacrifice a considerable portion of its gross margin in order to maintain or increase its production volumes of its substitutable fabrics. The CTI also argued that the cost and benefit analysis in the Tribunal's staff investigation report points to the conclusion that it would not be in the national interest to eliminate tariffs in this case.

Accordingly, the CTI concluded that Western Glove has not made a valid case for tariff elimination and urged the Tribunal not to recommend tariff relief.

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9. DIFCO's position is that it is capable of providing greige fabrics which could be converted into finished fabrics identical to or substitutable for the subject fabrics.

10. These costs and services are described in Doubletex's confidential response to the Tribunal's questionnaire.

### Canadian Apparel Federation (CAF)

The Canadian Apparel Manufacturers Institute (CAMI), on behalf of CAF, argued that fabrics identical to or substitutable for the subject fabrics are not available from domestic textile manufacturers. It based its conclusion on the fact that domestic fabrics, when compared to the subject fabrics, are higher-priced, have longer delivery times and are not available in significant volumes.

CAMI submitted that the domestic industry does not produce identical or substitutable fabrics or commercially competitive fabrics and that there is little, if any, likelihood of it doing so in the future. It further alleged that Canadian textile producers want to make identical or substitutable fabrics only if they have the opportunity, the protection and an order from Western Glove or other companies.

CAMI argued that the existing cotton fabric business of Doubletex and DIFCO would not be affected by the granting of tariff relief. CAMI also argued that tariff relief should be granted until such time as Doubletex can demonstrate that it can supply fabrics identical to or substitutable for the subject fabrics in commercial quantities.

CAMI submitted that it has been clearly demonstrated that there are significant benefits flowing to Western Glove and, on this basis, tariff relief should be granted.

### American Textile Manufacturers Institute (ATMI)

The ATMI is the national association of the U.S. textile mill products industry. According to the ATMI, several of its member companies account for the majority of cotton twill fabric woven in the United States and for the majority of cotton twill fabric exported around the world and to Canada.

The ATMI<sup>11</sup> submitted that it opposes Western Glove's request for tariff relief on the subject fabrics on the grounds that the subject fabrics are available duty-free from fabric producers in the United States. Furthermore, the ATMI argued that removing the tariff on the subject fabrics would greatly disadvantage U.S. producers and upset the balance of concessions jointly reached by the United States and Canada in the negotiation of the *FTA* and *NAFTA*.

According to the ATMI, the U.S. textile industry has been producing and selling the subject fabrics to apparel manufacturers for decades. The ATMI alleged that all U.S. producers of the subject fabrics are currently operating at less than capacity and that production can be diverted from other related fabrics to satisfy an increase in demand for the subject fabrics.

### **OTHER INFORMATION**

DFAIT informed the Tribunal that Canada currently maintains quota restraints on finished woven fabrics of cotton imported from the People's Republic of China, Hong Kong and Taiwan. According to DFAIT, this also includes fabrics of cotton of tariff item Nos. 5209.31.90 and 5209.32.00. DFAIT further stated that bilateral agreements, which provide for these restrictions, between the Government of Canada and the Government of Hong Kong and the Taiwan Textile Federation, have been in place since 1979. The bilateral agreement between the Government of Canada and the Government of the People's Republic of China has been in place since 1987. According to DFAIT, quota limits on finished fabrics of cotton were implemented to protect Canadian manufacturers from large volumes and low prices of exports from these countries.

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11. The ATMI submitted fabric samples to the Tribunal.



DFAIT indicated that it will consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove the customs tariff on the basis of non-availability. Ex-quota treatment will only be granted in cases where it can be demonstrated that there is an extra charge for using products under quota or where goods are not otherwise available in Canada.

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.

Western Glove's request is for two types of fabric, twill and canvas, both dyed, solely of cotton, weighing 230 g/m<sup>2</sup> or more but not exceeding 310 g/m<sup>2</sup>. These fabrics are used to produce trousers, shorts, overalls, skirts and jackets. Canvas fabrics have a plain weave,<sup>12</sup> whereas twill fabrics have a diagonal rib<sup>13</sup> and a distinct look and feel.

Turning first to the question of canvas fabrics, the Tribunal has stated in the past<sup>14</sup> 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. This is also true with respect to the canvas products that Doubletex alleges that it can supply. Doubletex has not provided any evidence to support a conclusion that it can currently supply the market with commercial quantities of a canvas fabric that is substitutable for the subject fabrics. Accordingly, the Tribunal is of the opinion that canvas fabrics that are identical to or substitutable for the subject canvas fabrics are not produced in Canada and, therefore, concludes that there would be no cost to the domestic industry if tariff relief were granted on these fabrics.

The Tribunal next looked at whether the twill fabrics produced by the domestic industry are identical to or substitutable for the subject twill fabrics. Western Glove submitted that it requested tariff relief because the few suitable identical or substitutable fabrics that can be found in the marketplace are much higher in price, have longer delivery times and cannot satisfy its production volume requirements. Western Glove's request also specified that the twill fabric that it requires needed to be made with "ring-spun" yarns, microsanded and dyed using the continuous-dyeing process. These features, according to Western Glove, are necessary for it to differentiate its garments in the marketplace and, allegedly, are not available from domestic production.

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12. According to *Fairchild's Dictionary of Textiles*, 7th ed., s.v. "canvas", canvas fabrics are described as strong, firm, closely woven fabrics usually made with cotton.
  13. According to *Fairchild's Dictionary of Textiles*, *ibid.*, s.v. "twill weave", a twill weave is characterized by a diagonal rib, or twill line, generally running upward from left to right.
  14. See, for example, *Camp Mate Limited* (10 June 1996), TR-95-051 (CITT); *Lady Americana Sleep Products Inc. and el ran Furniture Ltd.* (12 February 1997), TR-95-064 and TR-95-065 (CITT); *Cambridge Industries* (12 February 1999), TR-98-001 (CITT); *Helly Hansen Canada Limited* (19 March 1999), TR-97-015, TR-97-016 and TR-97-020 (CITT); *Jones Apparel Group Canada Inc.* (8 July 1999), TR-98-017 (CITT); and *Tribal Sportswear Inc.* (24 August 1999), TR-98-019 (CITT).

Doubletex claimed that it currently makes and sells twill fabrics that are identical to or substitutable for the subject fabrics and that it can supply identical goods made from either imported or Canadian greige (*NAFTA*-qualified) fabrics. It identified four of its twill fabrics as being identical to the subject fabrics, including a microsanded<sup>15</sup> fabric identified as “Sandlewood”. It considered two fabrics to be substitutable for the subject fabrics.<sup>16</sup> However, none of these fabrics were described by Doubletex as having been “ring spun”.

In conducting its economic assessment, the Tribunal took into account comparisons of the prices of both the subject twill fabrics and twill fabrics that the domestic industry alleged were identical to or substitutable for the subject fabrics. In both years for which the Tribunal collected data, the selling prices of the domestic fabrics were materially higher, sometimes by as much as 40 percent, than the prices of the subject fabrics. This implies that, in order to compete with the subject twill fabrics imported by Western Glove, Doubletex would have to sell its fabrics at a loss or for a very small profit. Yet, Doubletex appears to do neither. These price differences alone are sufficient to cast serious doubt on the domestic’s industry’s allegation that it produces fabrics which are identical to or substitutable for the subject fabrics.

The CTI argued that Doubletex’s prices include costs and services not found in the prices of the subject fabrics. However, neither the CTI nor Doubletex explained how these services would be of sufficient value for Western Glove to pay the premium expected by Doubletex. Consequently, the Tribunal gave little weight to this argument. The Tribunal is convinced that, even if there were no differences in fabric composition or technical specifications, the twill fabrics supplied by the domestic industry are so much more expensive that they are not closely substitutable for the subject twill fabrics.

The Tribunal believes that, of all the twill fabrics submitted by Doubletex, only “Sandlewood”, on the basis of fabric composition and feel, may have some degree of substitutability. However, as is the case with other Doubletex fabrics, the price of “Sandlewood” is so much higher than the price of the subject fabrics that, in practical terms, “Sandlewood” can only be considered marginally substitutable for the subject fabrics. In fact, it appears unlikely that Doubletex will be able, in the near future, to sell any of this fabric to Western Glove, even if the tariff remains in place.

For its part, DIFCO has argued that its predecessor sold fabrics to Western Glove that were similar to the subject fabrics. However, these sales were for a finished fabric sold directly to Western Glove. DIFCO’s current allegation is that it can produce a greige fabric that could be sold to Doubletex for finishing into identical or substitutable fabrics. The fact that DIFCO is not currently selling greige fabrics that are converted by a third party, and ultimately sold as an identical or substitutable fabric, indicates to the Tribunal that DIFCO is not currently producing a substitutable fabric in commercial volumes and that, therefore, there would not be any costs to DIFCO if tariff relief were granted.

In summary, while it appears that one twill fabric, “Sandlewood”, supplied by the domestic industry may, to a limited degree, be substitutable for the subject twill fabrics, the Tribunal cannot, for the reasons outlined above, conclude that the domestic industry is capable of supplying twill fabrics in the volumes and price ranges that would make them identical to or substitutable for the subject twill fabrics. Furthermore, the Tribunal is of the opinion that the limited costs to the domestic industry which may arise from the granting of tariff relief will be more than offset by the future benefits that Western Glove and other fabric users will receive.

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15. This fact was not disputed by any opposing parties and was confirmed by Revenue Canada’s laboratory report.

16. In a previous case, *Tribal Sportswear Inc. ibid.*, Doubletex indicated that these same four fabrics (i.e. “Diego”, “Sandlewood”, “Cotton Twill” and “Driftwood”) were identical to or substitutable for cotton/spandex fabrics.

Tariff relief would provide an estimated net yearly benefit of more than \$250,000<sup>17</sup> to Western Glove and other users of the subject fabrics. 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.

With respect to Western Glove's request for retroactive tariff relief, the Tribunal has stated, in previous cases, that it will not consider recommending such relief other than in exceptional circumstances. Western Glove has provided no evidence to justify such a request. The Tribunal, therefore, is not persuaded that the current circumstances are so exceptional as to warrant a recommendation for retroactive relief.

### **RECOMMENDATION**

In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries, of woven fabrics, dyed, solely of cotton, either plain or 3-thread or 4-thread twill weave, weighing 230 g/m<sup>2</sup> or more but not exceeding 310 g/m<sup>2</sup>, of subheading No. 5209.31 or 5209.32, for use in the manufacture of trousers, shorts, overalls, skirts and jackets.

Peter F. Thalheimer  
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Presiding Member

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17. Based on the 1999 data, more than 60 percent of these savings are attributable to imports of canvas.