



**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR RECONSIDERATION  
OF THE TRIBUNAL'S RECOMMENDATION  
IN REQUEST NO. TR-99-003  
REGARDING  
CERTAIN WOVEN FABRICS OF COTTON**

**October 6, 2000**

**WESTERN GLOVE WORKS LTD.**

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

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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 (TR-99-003) 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 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).

On February 4, 2000, after completing its investigation, the Tribunal concluded that the domestic industry was not supplying fabrics identical to or substitutable for the subject fabrics. Consequently, the Tribunal recommended to the Minister of Finance that tariff relief be granted on the subject fabrics.

On February 29, 2000, Doubletex, a producer of fabrics allegedly identical to or substitutable for the subject fabrics, wrote to the Tribunal requesting that the Tribunal reconsider its recommendation. To justify its request, Doubletex referred to the Tribunal's report, which stated that "even if there were no differences in fabric composition or technical specifications, the twill fabrics supplied by the domestic industry [i.e. Doubletex] are so much more expensive that they are not closely substitutable for the subject twill fabrics".<sup>3</sup> According to Doubletex, this conclusion was wrong because the Tribunal may have misinterpreted the average unit prices in Doubletex's questionnaire response as being dollars per square metre as opposed to dollars per linear metre.<sup>4</sup> Doubletex submitted that, if this were so, then its prices would be significantly lower than those shown in the Tribunal's staff investigation report and that the Tribunal's recommendation would no longer be supported by the record of the investigation.

On April 14, 2000, the Tribunal sent a letter to all counsel and parties of record requesting submissions in relation to this request. Specifically, the Tribunal invited submissions regarding its jurisdiction to reopen its investigation and to review its recommendation before an order is issued by the Minister.

In response to the Tribunal's letter, Western Glove submitted that its comments were conditional on the fact that the only possible issue for reconsideration relates to twill fabrics and not plain weave fabrics. It further stated that the only fabric that should be reviewed is a fabric identified as "Sandlewood", since it is the only fabric that is marginally substitutable for the subject fabrics. Furthermore, given the inordinate

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

2. C. Gaz. 1999.I.2291.

3. *Western Glove Works* (4 February 2000), TR-99-003 at 8.

4. Using Doubletex's widths, a linear metre is approximately 1.5 square metres. It should be noted that the Tribunal's original questionnaire requested that all responses be expressed in square metres.

length of time to settle this matter, Western Glove requested tariff relief retroactive to the date of the recommendation. The Canadian Apparel Federation supported Western Glove's position.

Doubletex submitted that, given the fact that price seemed to be the key factor in the Tribunal's analysis and recommendation, any comparative price error would have a material impact on the analysis and recommendation. It further indicated that, if a mistake fundamental to the recommendation was made, the recommendation should be changed or fundamentally altered. The Canadian Textiles Institute (CTI) supported Doubletex's position.

After considering these submissions, on June 23, 2000, the Tribunal gave notice that it would reconsider the recommendation that it made on February 4, 2000. As part of its reconsideration, the Tribunal requested additional information from Doubletex concerning its transportation costs from Montréal, Quebec, to Winnipeg. On July 4, 2000, the Tribunal amended its original staff investigation report<sup>5</sup> to reflect the new information supplied by Doubletex and provided parties with the new evidence. Three parties filed submissions with regard to the reconsideration.

## **REPRESENTATIONS**

### **Western Glove**

Western Glove submitted that "Sandlewood", the only product identified by the Tribunal as marginally substitutable for the subject fabrics, did not meet its requirements because the yarn is neither 2-ply nor ring-spun and the fabric is neither microsanded nor continuously dyed. According to Western Glove, these characteristics are essential for an improved hand or feel, and to ensure a finer fabric construction, improved fabric strength and reduced production times and costs. Furthermore, Western Glove stated that, in its original report, the Tribunal already concluded that the domestic industry was incapable of supplying twill fabrics in the volumes and price ranges that would make them identical to or substitutable for the subject fabrics. Western Glove also submitted that, even before the domestic industry's fabric prices were adjusted downward, the Tribunal had reached the conclusion that the potential costs to the domestic industry arising from the tariff relief would be more than offset by the future benefits that Western Glove and other users of the subject fabrics would receive.

Western Glove also argued that Doubletex has not established that its product is identical to or substitutable for the subject fabrics.

Western Glove provided a copy of a letter dated March 1, 1999, in which Doubletex quoted a price for "Sandlewood" to Western Glove that, when converted to a price per square metre, was significantly higher than the price mentioned in Doubletex's letter of February 29, 2000, to the Tribunal or the price indicated in Table 3 of the amended staff investigation report. Western Glove also submitted that, all other things being equal, a sale may be won or lost on the difference of 5 cents per linear metre or 3.33 cents per square metre. These facts, accordingly to Western Glove, do not support Doubletex's position on fabric specifications or fabric pricing.

Western Glove submitted that, given these facts, the Tribunal should reaffirm its recommendation to the Minister.

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5. A revision, dated July 4, 2000, was made to Table 3, on page 10 of the staff investigation report.

## Doubletex

Doubletex submitted that, given the fact that price seems to be the key factor in the Tribunal's analysis and subsequent recommendation, any comparative price error would have a material impact on its analysis and recommendation. It concluded that, if a mistake fundamental to the recommendation was made, the recommendation should be changed or fundamentally altered.

Doubletex also submitted that its selling prices, as provided in its questionnaire response during the initial investigation, were slightly different from those reported to the Tribunal and indicated in the amended staff investigation report.<sup>6</sup>

## CTI

The CTI commented that the keystone of the Tribunal's analysis in the original investigation was that the prices of pant fabrics made and sold by Doubletex were materially higher than the prices of the subject fabrics. According to the CTI, the amendment to the staff investigation report is significant and invalidates major elements of the original analysis. In light of the now established facts, the CTI asked the Tribunal to recommend that tariff relief not be granted.

## DECISION

In its reconsideration, the Tribunal must determine if the new evidence adduced is of such a nature as to invalidate its previous recommendation.

Doubletex's position was that, given that price was a key factor in the Tribunal's analysis and subsequent recommendation, any material price error would have a significant impact on its analysis and recommendation. On the other hand, Western Glove argued that, even if the Tribunal "misinterpreted" the information concerning average unit prices, this would not necessarily imply that the recommendation was wrong, because the decision to recommend tariff relief was based on an assessment that the goods produced by Doubletex were not identical to or substitutable for the subject fabrics. Western Glove submitted that, according to established Tribunal practices, substitutability is a combination of factors, including price, technical description, market acceptance and ability to supply. Western Glove concluded that there was no evidence to support the conclusion that Doubletex has the ability to supply fabrics identical to or substitutable for the subject fabrics.

The Tribunal has reviewed its recommendation and the supporting evidence. In so doing, the Tribunal notes that Doubletex's request appears to have been triggered by the following statement in the Tribunal's report to the Minister:

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.<sup>7</sup>

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6. This comment from Doubletex pertains to the 1999-2000 prices shown in Table 3 of the amended staff investigation report. For 1999-2000, the Tribunal's staff used the information provided by Doubletex on February 29, 2000 (actual sales) and on June 29, 2000 (transportation costs). However, to obtain its 1999-2000 pricing data, Doubletex appears to have used the information that it provided in its response to the manufacturer's questionnaire, dated August 24, 1999, adjusted to include transportation costs.

7. *Supra* note 3.

Before dealing with the specifics of the request for reconsideration, the Tribunal wishes to indicate that, although price may be a consideration in determining whether a domestic fabric is substitutable for imported fabrics, it has not been the Tribunal's practice to determine substitutability solely on the basis of price. In fact, in most, if not all, textile cases, the main factor in determining substitutability has not been price differences between imported fabrics and domestically produced fabrics.

It should be noted that the original request was for tariff relief on both canvas and twill fabrics. Since the new information provided by Doubletex relates only to twill fabrics and there has been no new information submitted regarding canvas fabrics, the Tribunal has restricted the reconsideration of its recommendation to twill fabrics.

Turning to the specifics of the current request, the Tribunal points to the statement that it made in its report to the Minister that, in its view, of all the twill fabrics submitted by Doubletex, only "Sandlewood", on the basis of fabric composition and feel, might have some degree of substitutability.<sup>8</sup> This statement implies that, even if there were no price differences, only "Sandlewood" could be considered even remotely substitutable for the subject fabrics. Since all Doubletex's other fabrics were already considered to be unsuitable substitutes for reasons other than price, the Tribunal will only address Doubletex's concerns with respect to "Sandlewood".

The Tribunal notes that, with respect to "Sandlewood", there has been no evidence indicating that it has been produced from ring-spun, 2-ply yarn, or has been made using a continuous dying process. Western Glove indicated that these are features that it needed in order to differentiate its garments from those of its competitors. Regarding microsanding, another feature required by Western Glove, the evidence is less clear; although there is information indicating that "Sandlewood" is abraded, there is no conclusive evidence on record indicating that "Sandlewood" has been microsanded. After comparing "Sandlewood" and the subject fabrics, the Tribunal is of the view that the hand and look of these fabrics are different. Furthermore, even after taking into account the revisions requested by Doubletex, its prices are still significantly higher than those of the twill that Western Glove imported during the last year examined.<sup>9</sup> This is especially true after considering Western Glove's statement that, for these fabrics, sales will turn on a very small price differential. For the aforementioned reasons, the Tribunal is of the opinion that none of the evidence supplied by Doubletex, either before or after the recommendation was issued, would lead to the conclusion that any of its products, including "Sandlewood", can be considered substitutable for the subject fabrics.

Therefore, on the basis of its examination of all the information and submissions in Request Nos. TR-99-003 and TR-99-003A, the Tribunal reaffirms the recommendation that it made in its report to the Minister on February 4, 2000, i.e. 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.

Because of the delays that have occurred in implementing this recommendation, Western Glove requested that the Tribunal make the effective date for tariff relief retroactive to the date of the original recommendation. Although the Tribunal recognizes that this recommendation may take longer than usual to implement, its policy, as expressed in the *Textile Reference Guide*, is that it will not consider any request for retroactive tariff relief unless the most exceptional circumstances exist. The Tribunal has not seen any

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8. *Ibid.*

9. Western Glove's data were forecasts for its year ending March 31, 2000, whereas Doubletex's data are for its year ending December 31, 1999.

evidence to convince it that such exceptional circumstances exist. Consequently, the Tribunal is not prepared to grant the request for retroactive tariff relief.

Peter F. Thalheimer

Peter F. Thalheimer  
Presiding Member

Pierre Gosselin

Pierre Gosselin  
Member

James A. Ogilvy

James A. Ogilvy  
Member