

TEXTILE REFERENCE

ANNUAL STATUS REPORT

**OCTOBER 1, 1998,
TO
SEPTEMBER 30, 1999**

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INTRODUCTION

On July 6, 1994, the Minister of Finance (the Minister) mandated the Canadian International Trade Tribunal (the Tribunal) to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations and to make recommendations which, ultimately, should maximize net economic gains for Canada. Since then, there have been four minor modifications to the terms of reference.¹

This report describes the highlights of the textile tariff relief program during the period from October 1, 1998, to September 30, 1999, followed by a more detailed description of the activities undertaken by the Tribunal. The appendices contain a general description of the tariff relief program (Appendix I), as well as a statistical overview of requests received, investigations completed and in progress as of September 30, 1999, and tariff relief recommendations currently in place.

HIGHLIGHTS

During the period covered by this report, the Tribunal received 18 requests for tariff relief, the same number as for the comparable period in 1997-98. The number of requests has been relatively stable over the last four years, but is considerably lower than the 73 requests that were received in 1994-95, the initial year of the textile tariff relief program.

During the year, 13 investigations were completed, covering 17 requests, resulting in 13 reports to the Minister. In 16 of those 17 requests, the Tribunal concluded that granting tariff relief would maximize net economic gains for Canada and, consequently, recommended that tariff relief be granted, in all cases, for an indeterminate period.

The textile tariff relief recommendations made by the Tribunal and implemented by the government since the start of the program, in the fall of 1994, provided tariff relief worth approximately \$21 million in 1998-99, covering imports of textile inputs worth about \$158 million. The removal of these duties has allowed Canadian textile-using producers to reduce costs and prices, as well as to enhance their competitiveness and levels of employment.

The Tribunal significantly improved the processing time for tariff relief requests. The pre-commencement period (i.e. from receipt of the request to the commencement of the investigation) was shorter, and the investigation was conducted faster than in the previous year. The time taken by the government to implement the Tribunal's recommendations was also shorter.

1. On March 20, 1996, following consultations with industry officials and after having reviewed the Tribunal's first annual status report, the Minister revised the terms governing the textile reference. On July 24, 1996, the Minister further revised the terms of reference by removing certain knitting yarns from the purview of the textile reference. On November 26, 1997, the Minister modified the terms of reference to remove the possibility of company-specific relief in future requests for tariff relief, except with respect to requests for relief on textile inputs used in the manufacture of women's swimsuits, co-ordinated beachwear and co-ordinated accessories. Finally, on August 19, 1999, the Minister further modified the terms of reference (see Appendix II) to continue, until at least July 1, 2002, the removal of certain knitting yarns from the purview of the reference and to replace the *GATT 1994 Agreement* with the *World Trade Organization Agreement* as one of the agreements that the Tribunal should bear in mind when assessing the effect of tariff and non-tariff liberalization on domestic textile and downstream producers.

NEW REQUESTS

During the period covered by this report, the Tribunal received 18 requests for tariff relief, the same number as for the comparable period in 1997-98.

Almost all the requests for tariff relief received in 1998-99 originated with producers in the apparel industry. The apparel industry has consistently been the largest user of this program since its inception in 1994, accounting for 71 percent of all requests to date, followed by the furniture industry and the textile industry, which have each filed about 5 percent of all requests to date. Less frequent users have included a diverse group of industries, among others, those that manufacture footwear, tents and rope.

The majority of the requests for tariff relief received during 1998-99 originated in Quebec, with Ontario being a distant second. Traditionally, these two provinces have accounted for most of Canada's apparel industry.

While requests for tariff relief have covered a fairly broad spectrum of the textile inputs specified in the Minister's reference, the overwhelming proportion of requests (94 percent) received during 1998-99 have been for tariff relief on fabrics, as opposed to other textile inputs. This follows the pattern which has emerged since the implementation of the program. Since the majority of firms requesting tariff relief are engaged in the manufacture of apparel, the majority of the requests for tariff relief have involved fabrics, rather than yarns or other textile inputs. During the year, one request for tariff relief on certain nylon yarns was also received.

The terms of reference limit the application of the textile program to certain chapters of the *Customs Tariff*.² The bulk of the requests for tariff relief, since they originate with apparel manufacturers, have focused on those chapters relating to traditional textile inputs used in the manufacture of apparel and have only rarely involved chapters of the *Customs Tariff* that pertain primarily to non-textile inputs. During 1998-99, 80 percent of all requests pertained to textile inputs contained in Chapters 51 ("Wool, fine or coarse animal hair; horsehair yarn and woven fabric"), 52 ("Cotton"), 54 ("Man-made filaments") and 60 ("Knitted or crocheted fabrics").

The number of requests received by the Tribunal in 1998-99 fluctuated considerably on a month-to-month basis. Of the 18 requests received, almost half (8) were received in November 1998.

Appendices III to VII provide details of the requests by industry sector, geographic distribution, type of input, distribution by *Customs Tariff* chapter and monthly distribution respectively.

As of September 30, 1999, there were 4 investigations in progress (covering 4 requests) and 2 requests were awaiting commencement of investigation. Overall, during the year, 13 investigations were completed, resulting in 13 reports to the Minister covering 17 requests. In 16 requests, the Tribunal concluded that granting tariff relief would maximize net economic gains for Canada and, consequently, recommended that tariff relief be granted for an indeterminate period. In one instance, the Tribunal concluded otherwise and, consequently, recommended that tariff relief not be granted.

2. R.S.C. 1985 (3d Supp.), c. 41.

Table 1 provides a summary of these activities.

TABLE 1					
SUMMARY OF ACTIVITIES: NEW REQUESTS					
	1998-99	1997-98	1996-97	1995-96	1994-95
Requests					
Received	18	18	17	20	73
For Which Investigations Were Completed	17	9	17	59	11
For Which Investigations Were in Progress at Year End	4	13	4	9	18
Terminated/Withdrawn	14	1	2	7	3
Awaiting Commencement of Investigation	2	6	7	4	41
Investigations¹					
Commenced	10	14	8	19	27
Completed	13	8	11	29	9
In Progress at Year End	4	10	4	7	18
Terminated	3	0	0	1	0
Recommendations to Minister					
Tariff Relief	16	7	15 ³	22 ²	10
No Tariff Relief	<u>1</u>	<u>2</u>	<u>3</u>	<u>38</u>	<u>1</u>
	17	9	18 ³	60 ²	11
Reports to Minister⁴					
	13	5	11	27	9

1. May cover more than one request.

2. The recommendation with regard to Request No. TR-94-002A, which reaffirmed a recommendation for tariff relief previously made by the Tribunal in 1994-95 in Request No. TR-94-002, is included in this total. Therefore, although 59 requests were investigated during the year, the Tribunal issued 60 recommendations to the Minister, contained in 27 reports.

3. The recommendation with regard to Request No. TR-95-056A, which was that an additional tariff item be added to Code 4402 (which implemented a Tribunal recommendation previously made in Request No. TR-95-056), is included in this total. Therefore, although 17 requests were investigated during the year, the Tribunal issued 18 recommendations to the Minister, contained in 11 reports.

4. May cover more than one investigation.

In total, in the five years of investigating requests for tariff relief, the Tribunal issued 65 reports to the Minister, covering 113 requests. The Tribunal recommended that the tariff relief requested be granted with regard to 68 of these requests.

As of September 30, 1999, Tribunal recommendations covering 65 of the foregoing 68 requests had been implemented by order of the Governor in Council, on the recommendation of the Minister, pursuant to paragraph 68(1)(a) of the *Customs Tariff*, and a further 2 recommendations were under consideration by the Minister. In one instance (Request No. TR-94-014), the Minister decided not to accept the Tribunal's recommendation, and tariff relief was not granted.

A total of 18 recommendations were implemented during 1998-99. On average, it took slightly less than three months for the Tribunal's recommendations to be implemented during the year, a significant improvement over last year when the average was slightly less than four months.

The level of activity within the Tribunal regarding the investigation of requests for tariff relief was, in 1998-99, similar to the previous year, as approximately 6 percent of the Tribunal's human resources were committed to the program. However, as noted last year, the randomness of the arrival/timing of requests continues to create scheduling and staffing difficulties.

REVIEWS

The Tribunal reported, last year, that it had initiated new procedures governing the expiry and review of its recommendations implemented by temporary tariff relief orders and that it had issued four recommendations to the Minister during 1997-98.

During 1998-99, the Tribunal concluded two separate reviews that it had initiated in the previous period: TA-98-004, a review of Request Nos. TR-94-002 and TR-94-002A, and TA-98-003, a review of Request No. TR-95-014. Neither of these reviews required a full investigation because, in the former instance, the parties involved in the review reached an agreement concerning the continuation, for a further period of three years, of tariff relief and, in the latter instance, no parties were opposed to the continuation of tariff relief. In both instances, the Tribunal recommended that tariff relief be continued.

The terms of reference are not clear as to the Tribunal's mandate in a review: is it to review the recommendation as it was issued or, rather, to review the government's implementation of tariff relief? In most instances, recommendations get implemented without modification. However, the review concerning certain ring-spun yarns (a review of Request Nos. TR-94-002 and TR-94-002A, often identified as the "Kute-Knit" case) was very different, as the government granted tariff relief for a much broader group of fabrics than that for which the Tribunal had recommended tariff relief. After considering its authority in dealing with this review, the Tribunal concluded that it could review the two orders granting tariff relief, which were both made as a result of the two Tribunal recommendations, because they summed up the compromise that was reached by textile spinners and knitters. In summary, the Tribunal interprets the terms of reference as allowing it, in the case of time-specific tariff relief, to review the government's implementation of tariff relief.

Table 2 provides a summary of activities relating to expiries and reviews.

	1998-99	1997-98	1996-97
Notices of Expiry	1	4	1
Reviews			
Underway at Beginning of Year	1	1	0
Commenced	1	4	1
Completed	2	4	0
In Progress at Year End	0	1	1
Recommendations to Minister			
Continuation of Tariff Relief	2	2	0
Termination of Tariff Relief	0	2	0

EFFECTS OF THE PROGRAM

By the end of September 1999, the government had added 134³ new tariff items to implement Tribunal recommendations. These tariff items covered imports worth \$158 million during 1998-99 and provided tariff relief worth approximately \$21 million.⁴ Table 3 provides a year-to-year comparison of imports benefiting from tariff relief.

	1998-99	1997-98	1996-97	1995-96	1994-95
Number of Codes	-	44	44	21	4
Number of Tariff Items	134	93	-	-	-
Total Imports (\$000)	157,971	186,478	139,223	22,384	1,523
Estimated Tariff Relief (millions)	21	25	19	3	0.2

Source: Statistics Canada.

During 1998-99, imports benefiting from tariff relief provided by these tariff items represented 0.71 percent of all imports (\$22.2 billion) reported during the year by Statistics Canada and classified in Chapters 39, 40, 51 to 56, 58 to 60 and 70 of the *Customs Tariff*. Details on these benefits, by chapter of the *Customs Tariff*, are presented in Appendix VIII.

The impact of tariff relief was principally on textile inputs falling in five chapters of the *Customs Tariff*: Chapter 53 (“Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn”), where slightly more than 5.0 percent of total imports benefit from tariff relief provided by the program; and Chapters 52 (“Cotton”), 54 (“Man-made filaments”), 55 (“Man-made staple fibres”) and 58 (“Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery”), where these percentages are between 3.1 and 4.5 percent of all imports.

Tariff relief recommendations are also implemented by the government through the issuance of remission orders. As of September 30, 1999, two remission orders were in place: P.C. 1997-1668 (Les Collections Shan Inc.); and P.C. 1998-1118 (Alpine Joe Sportswear Ltd.). Over the years, remission orders have provided additional tariff relief worth approximately \$1.2 million in 1995-96, \$100,000 in 1996-97, \$120,000 in 1997-98, and \$93,000 in 1998-99.

As the Tribunal stated last year, given that the intent of the tariff relief program is to remove the burden of duties from imported textile inputs that are used in the manufacturing operations of Canadian

3. Up to December 31, 1997, the government implemented Tribunal recommendations by adding specific codes to the *Customs Duties Reduction or Removal Order, 1988* made by Order in Council P.C. 1987-2738 dated December 31, 1987. As of January 1, 1998, these codes have all been replaced by new tariff items, and new implementations have been made by adding new tariff items to the *Customs Tariff*.
4. Estimates based on 1999 MFN rates.

producers, the program has clearly succeeded. Indeed, in its five years of existence, the program has provided tariff relief worth more than \$68 million. The removal of these duties has allowed Canadian producers to reduce their production costs. In turn, this has assisted these producers in controlling cost and price levels and thereby enhanced their competitiveness and levels of employment. The Tribunal believes that the program has had a very positive impact on this industry sector and that increased production has undoubtedly been promoted.

However, for the first time since the beginning of the program in 1994, the program provided less tariff relief (\$21 million) in 1998-99 than during the preceding year (\$25 million). While it is difficult to know the exact reasons for this, it would appear that some fabrics, for which tariff relief has been provided, ceased to be in demand and, consequently, are no longer imported into Canada.

PRE-COMMENCEMENT PERIOD

Last year, the Tribunal put in place measures to speed up the processing of new requests, which included a commitment by the Department of National Revenue (Revenue Canada) (now Canada Customs and Revenue Agency [CCRA]) to streamline its procedures concerning the analysis and classification of samples to shorten the period that it usually takes to perform these tasks. As a result, the average period of time between the receipt of a request and the commencement of an investigation decreased from 147 days in 1997-98 to 67 days in 1998-99. The latter figure encompassed widely different situations, as one investigation was commenced 162 days after receipt of the request (the result of the requester's difficulty in submitting adequate samples), while another investigation was commenced within 7 days of receipt of the request by the Tribunal. Overall, the Tribunal concludes that the measures currently in place ensure that requests are processed as expeditiously as possible upon their receipt.

LENGTH OF INVESTIGATIONS

The length of time from the receipt of a properly documented request to the Tribunal's report to the Minister is specified in the terms of reference: the Tribunal's recommendations should be made within 120 days from the date of receipt of a properly documented request or within any earlier specified time frame, which the Tribunal determines to be appropriate, in cases of critical circumstances, after receipt of a properly documented request. In practice, the 120-day period starts with the issuance of the notice of commencement of investigation and ends with the distribution of the Tribunal's report.

In 1998-99, it took, on average, 137 days to conduct a tariff relief investigation (down from 158 days in 1997-98). This average is misleading, however, because of unusual circumstances that arose in a number of investigations during the past year. For example, one of the Tribunal's recommendations to the Minister was delayed by 104 days to allow parties to negotiate an agreement. A second investigation missed its deadline by 76 days because of the need for further research in the face of new evidence submitted by parties very late in the investigation and to allow parties the opportunity to comment on the new evidence. When these anomalies are excluded, it took slightly more than 97 days, on average, to carry out an investigation in 1998-99, a significant improvement over 1997-98 (i.e. more than 120 days when anomalies were also excluded).

The Tribunal makes every effort to have interested parties resolve their differences through mutual agreement, even at the risk of missing deadlines. The benefits of such conflict resolution are considered by the Tribunal to be consistent with the intent of the tariff relief program and to far outweigh any rigid and inflexible adherence to time frames. Indeed, the Tribunal would be remiss if it did not grant whatever extra time might be required in order to allow interested parties to resolve their differences through mutual

negotiation. In the same vein, when requests are unopposed, the Tribunal adopts an accelerated schedule. For instance, the period of investigation for Request No. TR-98-016 was only 62 days.

Exceptional circumstances will sometimes make it impossible, or less than imperative, for the Tribunal to meet its investigation deadlines. Nevertheless, in the normal course of events, the Tribunal is committed to submitting its recommendations to the Minister within the prescribed deadlines.

NATIONAL CUSTOMS RULINGS

Since December 2, 1997, at the request of its stakeholders, the Tribunal allows parties to file National Customs Rulings (NCRs) with their requests for tariff relief. Before that date, samples were submitted, along with the requests, and they were forwarded, by the Tribunal, to Revenue Canada for analysis and classification.

The option to file an NCR proved very popular in 1998-99. Of the 18 requests received during the year, 7 were filed with NCRs. More significantly, 5 of the last 6 requests received were filed with NCRs.

It should be noted, however, that these procedures are optional and that a requester that wishes to send samples to the Tribunal, along with its request for tariff relief, may still do so.

CONFIDENTIAL SAMPLES

While most samples submitted to the Tribunal are public, on occasion parties have requested that their samples be kept confidential on the basis that they are proprietary and that their release, at the time of their submission, would cause a prejudice. When faced with these requests, the Tribunal has consistently taken the view that it must conduct open and transparent investigations and that, because the availability in Canada of identical or substitutable textiles is one of the central issues in any textile tariff relief investigation, it is essential that sufficient information concerning the imported textiles and the textiles that are claimed by Canadian producers to be identical or substitutable be made public so that parties may properly respond to a request for tariff relief. However, the Tribunal has also stated that it understands that a balance must be struck between the need for public disclosure and the need of a party to keep certain information confidential.

In two instances in 1998-99, the Tribunal allowed samples to be put on the confidential record because the textile inputs were under development. However, the Tribunal made it a condition that the party submitting the sample had to allow access to this sample to all parties that were users of the imported fabric, provided these parties had signed an undertaking of confidentiality regarding the non-disclosure of confidential information to anyone who had not signed such an undertaking.

The Tribunal believes that this approach strikes a proper balance, and it will continue to use this procedure in the future.

EXPORTER CERTIFICATION

The Tribunal always seeks to describe, with a high degree of precision, the textile input for which it recommends tariff relief. This is done to ensure that only the goods for which tariff relief is requested are, in fact, provided with tariff relief. A difficulty arises when the characteristics (or features) of the textile input cannot be described in a way that can be administered by the CCRA (i.e. tested in a laboratory). For example, the presence of “virgin wool” in a fabric cannot be tested in a laboratory because virgin wool and recycled wool cannot be differentiated. When faced with problems of this nature, the Tribunal has, on

five occasions, issued recommendations requiring exporters to certify that the desired characteristic was present in the fabric (exporter certification).

In one recent case (Request No. TR-98-002), the recommendation covered a 100 percent cotton fabric that was produced on a Jacquard knitting machine and that had been double mercerized (i.e. both the cotton fibres and the fabric had been immersed in a caustic soda solution to cause a permanent swelling of the fibre and the fabric). Neither of these characteristics (produced on a Jacquard knitting machine and double mercerizing) could be tested by Revenue Canada. To ensure that only fabrics incorporating these two characteristics would be granted tariff relief, and not a wider set of fabrics, the Tribunal recommended that the exporter be obliged to certify the presence of these two characteristics in the fabrics exported to Canada. This recommendation was implemented by the government.

In September 1999, in a case where exporter certification could potentially have been used to describe a characteristic of the textile input in a new request, Revenue Canada advised the Tribunal that it was not in favour of such an approach. Revenue Canada indicated that, if exporter certification were used, it could no longer certify that the tariff relief, if granted, could be properly administered. As a consequence, the Tribunal may face the difficult choice of either recommending tariff relief for a broader range of inputs than is desirable or denying tariff relief because it cannot be administered properly.

REQUESTS FOR AN EXPANSION OF SCOPE

Again this year, the Tribunal received, after an investigation had commenced, a number of requests asking that the scope of the investigation be expanded to cover specific needs. For example, a party requested that the scope of the investigation be expanded to cover non-gender-specific apparel (when the investigation covered only men's apparel); some other parties asked that the investigation be expanded to include lighter (or heavier) fabrics. In all instances, the Tribunal denied these requests, as it would have necessitated the issuance of a revised notice of commencement of investigation and, thereby, would have caused undue delays in the resolution of the original request.

It should be noted that the Tribunal has, for the last two years, announced the receipt of requests on its Web site so that parties are informed of the requests that have been filed and so that they can react to this information. Parties wishing for an expansion of scope are strongly invited to file a fully documented request prior to the beginning of the investigation.

TRAINING

In its previous annual status reports to the Minister, the Tribunal reported that it had been engaged in providing Tribunal members and staff with in-house training seminars, as well as in organizing visits to various textile and apparel operations. It is the Tribunal's intention to continue such seminars, and a formal program of visits is planned for early 2000.

PUBLIC HEARING

During the year, no public hearings were held, and all investigations were handled by way of written submissions.

APPENDIX I

THE PROGRAM

Under its terms of reference, the Tribunal is mandated to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, for production. The textile inputs for which tariff relief may be requested are the fibres, yarns and fabrics of Chapter 51, 52, 53, 54, 55, 56, 58, 59 or 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. However, since July 24, 1996, and at least until July 1, 2002, some yarns are not included in the textile reference.⁵

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of women's swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. The Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

What Constitutes a Request

A properly documented request shall contain all the information requested in the *Textile Reference Guide* questionnaire, including, for the public record, the reasons for the request, a description of the textile input and its end use, the specific tariff relief sought, experience with sourcing domestic identical or substitutable textile inputs and anticipated benefits from the requested tariff relief. Confidential information in respect of such things as price comparisons between the imported textile input and domestic identical or substitutable textile inputs, and various production, import, export and cost data are also required. Samples of the textile input must accompany the request unless the requester has previously obtained an NCR for the textile input from the CCRA.

Notification of a Request

Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.

5. Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

This notification is designed to:

- increase transparency;
- identify potential deficiencies in the request;
- avoid unnecessary investigations;
- provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply;
- inform other users of identical or substitutable textile inputs;
- prepare the domestic industry to respond to subsequent investigation questionnaires; and
- give associations advance time for planning and consultation with their members.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as the CCRA, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the *Canada Gazette*.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the imported textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits and questionnaires. Information is obtained from the requester and interested parties, such as other users and potential domestic suppliers of the textile input, for the purpose of determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the *Canadian International Trade Tribunal Act*.⁶ Accordingly, the Tribunal will only distribute confidential information to independent counsel who are acting on behalf of a party and who have filed a declaration and undertaking to protect the confidentiality of any information received.

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

Recommendations to the Minister

The Tribunal will normally issue its recommendations, with reasons, to the Minister within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within such earlier specified time frame as the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Review Process

Where the Minister has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for amendment or termination should specify what changed circumstances justify such a request.

APPENDIX II**TRANSMITTAL LETTER REVISING TERMS OF REFERENCE**

August 19, 1999

Mr. Pierre Gosselin
Chairman
Canadian International Trade Tribunal
17th Floor, Standard Life Centre
333 Laurier Avenue, West
Ottawa, Ontario
K1A 0G7

Dear Mr. Gosselin:

I am writing further to my letters of July 6, 1994, March 20, 1996, July 24, 1996, and November 26, 1997, establishing the terms of reference for the Tribunal to follow in conducting, under section 19 of the *Canadian International Trade Tribunal Act*, investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations.

I am directing the Tribunal, when initiating new investigations on requests for tariff relief on imported textile inputs, within the rules of procedures developed for this reference, to:

- a) examine any properly documented request that it receives from a domestic producer for tariff relief on any of the following textile inputs used in its downstream manufacturing activities: fibres, yarns¹ and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59, or 60 of the *Customs Tariff*; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and, products of textile glass fibres of Chapter 70;
- b) conduct open and transparent investigations of these requests, ensuring that reasonable steps are taken to advise interested parties of any properly documented request for tariff relief and that all parties that have indicated an intention to participate in an investigation have the opportunity to make their views known, through written submissions or public hearings, as the Tribunal may determine to be necessary;
- c) assess the economic impact on domestic textile and downstream producers (on a commercial cost/benefit basis) of reducing or removing the tariff; and,

1. Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction, are not included in the textile tariff reference, at least until July 1, 2002.

- d) make recommendations:
 - with reasons described as transparently as possible, while respecting the confidentiality of commercially-sensitive business information, on the appropriateness of reducing or removing the tariff;
 - which are administrable on a cost effective basis and which could include textile input, time and/or “end-use” specific tariff provisions and, in the case of requests for tariff relief on textile inputs used in the manufacture of women’s swimsuits, co-ordinated beachwear and co-ordinated accessories only, could include company-specific relief;
 - specifying whether relief should be granted for a specific or indeterminate period, which could include elements such as duration and initiation procedures - who and when - for renewal, extension or amendment investigations, as circumstances warrant. (Where indeterminate relief is recommended, the Tribunal should establish a framework under which the recommendation would be reconsidered, if the circumstances that led to the initial recommendations have changed sufficiently to warrant such an investigation, including who may apply and when);
 - which should not cover goods beyond those established at the initiation of the investigation, except where sufficient notice is given for interested parties to respond;
 - which should be consistent with Canada’s international rights and obligations under its bilateral and multilateral trade agreements; and,
 - which, ultimately, should maximize net economic gains to Canada.

In performing its economic impact assessments, the Tribunal is directed to take into account all relevant economic factors, including, where appropriate:

- a) the extent to which the current and requested textile tariff structures represent, or would represent, a significant factor in investment and/or business decisions by domestic producers;
- b) the impact of tariff rate differentials, particularly those between Canada and the U.S., on competitiveness and investment;
- c) a domestic versus foreign price comparison, of the relevant textile input, based on recent attempts by the applicant to source the specific textile input from domestic and foreign producers;
- d) substitutability of imported textile inputs with domestic textile inputs (in terms of such factors as commercial availability of directly competing textile products and market acceptance); and,
- e) the ability of domestic producers, vis-à-vis foreign producers, to serve the Canadian downstream industries (bearing in mind such things as: industry sourcing patterns/market share; history of company sales; marketing and service history; repeat orders; delivery and other technical requirements; investment and business plans of current and potential suppliers; and, any extenuating circumstances).

The Tribunal should ensure that its recommendations are made as soon as practicable:

- i) within 120 days from the receipt of a properly documented request, and,
- ii) within any earlier specified timeframe, which the Tribunal determines to be appropriate, in cases of critical circumstances, after receipt of a properly documented case.

In assessing requests for tariff relief, the Tribunal should bear in mind:

- a) the effect on domestic textile and downstream producers of tariff and non-tariff liberalization flowing from the Canada-U.S. Free Trade Agreement, the North American Free Trade Agreement and the World Trade Organization Agreement; and,
- b) the effect of the elimination of full manufacturing duty drawback on non-NAFTA inputs post-1996, in the case of exports to the U.S. and 2001, in the case of exports to Mexico.

Finally, I would ask that the Tribunal continue to provide, on an annual basis, a status report on this investigation process and make recommendations for changes that may be appropriate to maximize net economic gains for Canada.

Sincerely,

The Honourable Paul Martin, P.C., M.P.

APPENDIX III
REQUESTS BY INDUSTRY SECTOR

	Apparel	Furniture	Textile	Other	Total
1998-99					
Number	17	0	0	1	18
Percent	94	0	0	6	100
1997-98					
Number	12	1	0	5	18
Percent	67	5	0	28	100
1996-97					
Number	16	0	0	1	17
Percent	94	0	0	6	100
1995-96					
Number	9	4	2	5	20
Percent	45	20	10	25	100
1994-95					
Number	50	3	5	15	73
Percent	68	4	7	21	100

APPENDIX IV

GEOGRAPHIC DISTRIBUTION OF REQUESTS

	Quebec	Ontario	British Columbia	Prairies	Maritimes	Outside Canada
1998-99						
Number	14	2	1	1	0	0
Percent	77	11	6	6	0	0
1997-98						
Number	5	5	1	0	7	0
Percent	28	28	5	0	39	0
1996-97						
Number	11	6	0	0	0	0
Percent	65	35	0	0	0	0
1995-96						
Number	9	5	3	2	0	1
Percent	45	25	15	10	0	5
1994-95						
Number	28	9	30 ¹	6	0	0
Percent	39	12	41	8	0	0

1. Twenty-eight of these requests covered similar textile inputs.

APPENDIX V
REQUESTS BY TYPE OF INPUT

	Fabric	Nonwoven	Yarn	Other	Total
1998-99					
Number	17	0	1	0	18
Percent	94	0	6	0	100
1997-98					
Number	15	1	0	2	18
Percent	83	6	0	11	100
1996-97					
Number	14	2	2	0	18 ¹
Percent	78	11	11	0	100
1995-96					
Number	17	2	1	0	20
Percent	85	10	5	0	100
1994-95					
Number	66	0	5	2	73
Percent	90	0	7	3	100

1. One request covered two types of input.

APPENDIX VI

REQUESTS BY *CUSTOMS TARIFF* CHAPTER

Chapter	1998-99		1997-98		1996-97		1995-96	
	Number of Requests	Percent	Number of Requests	Percent	Number of Requests	Percent	Number of Requests	Percent
39	0	0	0	0	0	0	1	4
40	0	0	0	0	0	0	0	0
51	2	11	1	4	0	0	1	4
52	5	26	2	7	3	14	0	0
53	1	5	1	4	0	0	0	0
54	6	32	4	15	8	38	5	22
55	1	5	1	4	4	19	4	17
56	0	0	4	15	2	10	2	9
58	1	5	4	15	1	4.5	2	9
59	1	5	7	25	1	4.5	2	9
60	2	11	3	11	2	10	5	22
70	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>4</u>
Total	19 ¹	100	27 ¹	100	21 ¹	100	23 ¹	100

1. Some requests cover more than one chapter.

APPENDIX VII

MONTHLY DISTRIBUTION OF REQUESTS

	<u>1998</u>			<u>1999</u>									
	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Total</u>
Number	1	8	1	0	2	1	0	0	2	1	2	0	18
Percent	5.5	45	5.5	0	11	5.5	0	0	11	5.5	11	0	100

APPENDIX VIII

**PERCENTAGE OF TOTAL IMPORTS ACCOUNTED FOR BY IMPORTS BENEFITING
FROM TARIFF RELIEF FURTHER TO TRIBUNAL RECOMMENDATIONS, BY *CUSTOMS*
TARIFF CHAPTER**

Chapter	Percent of Imports by Chapter	
	1998-99	1997-98
39	0.17	0.09
40	0.00 ¹	0.00 ¹
51	0.93	1.53
52	4.53	5.19
53	5.26	11.81
54	4.06	5.02
55	3.24	4.55
56	0.34	0.65
58	3.06	3.83
59	1.23	2.12
60	1.62	1.75
70	<u>0.12</u>	<u>0.11</u>
Weighted Average	<u>0.71</u>	<u>0.91</u>

1. Negligible imports.
Source: Statistics Canada.

APPENDIX IX

SUMMARY OF INVESTIGATIONS COMPLETED
BETWEEN OCTOBER 1, 1998, AND SEPTEMBER 30, 1999

Request No.	Requester	Textile Input	Subheading/ Tariff Item No.	Date of Commencement of Investigation	Date of Recommendation	Status/ Recommendation
TR-95-013A	Doubletex	Fabric	5208.11.10 5208.11.20 5208.12.10 5208.12.20 5208.12.30 5208.13.10 5208.19.10 5208.19.20 5208.21.10 5208.21.90 5208.22.10 5208.22.90 5208.23.00 5208.29.10 5208.29.90 5209.11.10 5209.11.20 5209.12.10 5209.19.20 5209.21.10 5209.21.90 5209.22.00 5209.29.10 5209.29.90	July 17, 1998	December 21, 1998	Indeterminate tariff relief
TR-97-006	Peerless Clothing Inc.	Fabric	5407.51.90 5903.90.29 6002.43.90	March 17, 1998	October 29, 1998	Indeterminate tariff relief
TR-97-011	Australian Outback Collection (Canada) Ltd.	Fabric	5209.31.00 5907.00.14	June 5, 1998	October 30, 1998	Indeterminate tariff relief
TR-97-014	Lenrod Industries Ltd.	Nonwoven	5603.93.90	June 3, 1998	November 10, 1998	Indeterminate tariff relief
TR-97-015, TR-97-016 and TR-97-020	Helly Hansen Canada Limited	Fabric	5903.20.29	September 4, 1998	March 19, 1999	Indeterminate tariff relief
TR-97-021	Wire Rope Industries Ltd.	Sisal Rope	5607.29.20 5607.29.90	August 5, 1998	January 5, 1999	No tariff relief
TR-98-001	Cambridge Industries	Netting	5608.19.90	October 15, 1998	February 12, 1999	Indeterminate tariff relief
TR-98-002	Distex Inc.	Fabric	6002.92	September 28, 1998	February 8, 1999	Indeterminate tariff relief
TR-98-004, TR-98-005 and TR-98-006	Ladcal Investments Ltd. O/A Pintar Manufacturing, Nour Trading House Inc. and T.S. Simms and Company Limited	Fabric	5806.10.20	January 29, 1999	April 14, 1999	Indeterminate tariff relief

Request No.	Requester	Textile Input	Subheading/ Tariff Item No.	Date of Commencement of Investigation	Date of Recommendation	Status/ Recommendation
TR-98-007	Caulfeild Apparel Group Ltd.	Fabric	5208.43.90	December 21, 1998	March 31, 1999	Indeterminate tariff relief
TR-98-016	Peerless Clothing Inc.	Fabric	5407.93.90	January 21, 1999	March 24, 1999	Indeterminate tariff relief
TR-98-017	Jones Apparel Group Canada Inc.	Fabric	5408.32.90 5408.33.90 5408.34.90	March 12, 1999	July 8, 1999	Indeterminate tariff relief
TR-98-019	Tribal Sportswear Inc.	Fabric	5209.32.00	April 13, 1999	August 24, 1999	Indeterminate tariff relief

APPENDIX X**SUMMARY OF INVESTIGATIONS IN PROGRESS AS OF SEPTEMBER 30, 1999**

Request No.	Requester	Textile Input	Tariff Item No.	Date of Commencement of Investigation
TR-97-012	Ballin Inc.	Fabric	5407.93.90 5516.23.90	March 25, 1999
TR-99-002	Albany International Canada Inc.	Yarn	5404.10.90	September 20, 1999
TR-99-003	Western Glove Works	Fabric	5209.31.90 5209.32.00	July 26, 1999
TR-99-004	Peerless Clothing Inc.	Fabric	5112.11.90 5112.19.91	September 23, 1999

APPENDIX XI

TARIFF RELIEF RECOMMENDATIONS IN PLACE AS OF SEPTEMBER 30, 1999

Request/Review No.	Requester	Tariff Item No./ O.I.C.	Duration
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate tariff relief
TR-94-004	Woods Canada Limited	5208.52.10	Indeterminate tariff relief
TR-94-010	Palliser Furniture Ltd.	5806.20.10	Indeterminate tariff relief
TR-94-012	Peerless Clothing Inc.	5309.29.20	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Indeterminate tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	9943.00.00	Indeterminate tariff relief
TR-95-003	Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indeterminate tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate tariff relief
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate tariff relief
TR-95-011	Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate tariff relief

Request/Review No.	Requester	Tariff Item No./ O.I.C.	Duration
TR-95-013A	Doubletex	5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indeterminate tariff relief
TR-95-036	Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate tariff relief
TR-95-051	Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate tariff relief
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate tariff relief
TR-95-056	Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate tariff relief
TR-95-057 and TR-95-058	Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	6002.43.30	Indeterminate tariff relief

Request/Review No.	Requester	Tariff Item No./ O.I.C.	Duration
TR-95-064 and TR-95-065	Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.10	Indeterminate tariff relief
TR-96-003	Venture III Industries Inc.	5407.61.92	Indeterminate tariff relief
TR-96-004	Acton International Inc.	5906.99.21	Indeterminate tariff relief
TR-96-006	Alpine Joe Sportswear Ltd.	P.C. 1998-1118	Six-year tariff relief
TR-96-008, TR-96-010 to TR-96-013	Les Collections Shan Inc.	P.C. 1997-1668	Five-year tariff relief
TR-97-001	Jones Apparel Group Canada Inc.	5407.91.10 5407.92.20 5407.93.10 5408.21.30 5408.22.40 5408.23.20 5408.31.30 5408.32.40 5408.33.10	Indeterminate tariff relief
TR-97-002 and TR-97-003	Universal Manufacturing Inc.	5208.43.30 5513.41.20	Indeterminate tariff relief
TR-97-006	Peerless Clothing Inc.	5407.51.30 5903.90.22 5903.90.23 5903.90.24 6002.43.40 6002.43.50	Indeterminate tariff relief
TR-97-004, TR-97-007, TR-97-008 and TR-97-010	Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20	Indeterminate tariff relief
TR-97-011	Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16	Indeterminate tariff relief
TR-97-014	Lenrod Industries Ltd.	5603.93.40	Indeterminate tariff relief
TR-97-015, TR-97-016 and TR-97-020	Helly Hansen Canada Ltd.	5903.20.24	Indeterminate tariff relief
TR-98-001	Cambridge Industries	5608.19.20	Indeterminate tariff relief
TR-98-002	Distex Inc.	6002.92.20	Indeterminate tariff relief

Request/Review No.	Requester	Tariff Item No./ O.I.C.	Duration
TR-98-004,	Ladcal Investments Ltd., O/A Pintar Manufacturing	5806.10.20	Indeterminate tariff relief
TR-98-005 and TR-98-006	Nour Trading House and T.S. Simms and Company Limited		
TR-98-007	Caulfeild Apparel Group Ltd.	5208.43.30	Indeterminate tariff relief
TR-98-016	Peerless Clothing Inc.	5407.93.20	Indeterminate tariff relief
TA-98-001 ¹	Certain dyed woven fabrics of rayon and polyester	5408.31.20	Indeterminate tariff relief
		5408.32.30	
TA-98-002 ²	Vinex FR-9B fabric	5512.99.10	Indeterminate tariff relief
TA-98-003 ³	Woven cut warp pile fabrics	5801.35.10	Indeterminate tariff relief
TA-98-004 ⁴	Certain ring-spun yarns	5205.14.20	Three-year tariff relief
		5205.15.20	
		5205.24.20	
		5205.26.20	
		5205.27.20	
		5205.28.20	
		5205.35.20	
		5205.46.20	
		5205.47.20	
		5205.48.20	
		5206.14.10	
		5206.15.10	
		5206.24.10	
		5206.25.10	
		5509.53.10	
	5509.53.20		
	5509.53.30		
	5509.53.40		

1. A review of Request No. TR-95-009.
2. A review of Request No. TR-94-009.
3. A review of Request No. TR-95-014.
4. A review of Request Nos. TR-94-002 and TR-94-002A.