

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR

TEXTILE REFERENCE

ANNUAL STATUS REPORT

**OCTOBER 1, 1994,
TO
SEPTEMBER 30, 1995**

TABLE OF CONTENTS

INTRODUCTION	1
WORKLOAD - OCTOBER 1, 1994, TO SEPTEMBER 30, 1995	2
Requests by Industry Sector	2
Geographic Distribution	2
Requests by Type of Input	2
Requests by <i>Customs Tariff</i> Chapters	3
Monthly Distribution of Requests	4
Processing of Requests	4
Length of Investigations	5
Reports to the Minister and Recommendations	5
RESOURCE ALLOCATIONS	7
Members	7
Staff	7
Operating Expenditures	7
REPORT ON THE FALL 1995 CONSULTATIONS	8
Participants	8
Submissions	8
TRIBUNAL COMMENTS ON THE PROGRAM	10
Effects of the Program to Date	10
Workload	10
Product Description	11
Substitutability	11
Net Economic Gains	13
Confidentiality	13
Critical Circumstances	14
Retroactivity	15
Standing as Domestic Producers	15
Duration of Tariff Relief	15
Scope of Reference	16
Circumvention	16
Time Frames	16
Public Hearings	17
Questionnaires	17
Training	17
Procedural Changes Already Implemented	17
Second Annual Status Report	18

LIST OF TABLES

Table 1	Requests by Industry Sector	2
Table 2	Geographic Distribution of Requests	2
Table 3	Requests by Type of Input	3
Table 4	Distribution of Requests by <i>Customs Tariff</i> Chapter	3
Table 5	Monthly Distribution of Requests	4
Table 6	Number of Days from Receipt of Request to Commencement of Investigation	5

LIST OF APPENDICES

Appendix I	Summary of Investigations Commenced as of September 30, 1995	19
Appendix II	Implementation of Tariff Relief Recommendations as of September 30, 1995	21
Appendix III	Summary of Submissions to the Tribunal during the Fall 1995 Consultations	22
Appendix IV	Transmittal Letter and Terms of Reference	27

INTRODUCTION

On July 6, 1994, the Minister of Finance (the Minister) directed 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 (see Appendix IV).

The Minister directed the Tribunal to consult with the textile and downstream industries and their respective associations in developing rules of procedure for the conduct of those investigations. In response to that directive, the Tribunal's staff met in the summer of 1994 with representatives of various textile and downstream manufacturers and their associations in order to develop rules of procedure that would, to the greatest extent possible, take into account the concerns of those parties. That consultation process culminated in the September 1994 production and distribution by the Tribunal of the Textile Reference Guide, which has governed all subsequent proceedings conducted by the Tribunal pursuant to the Minister's reference. The Tribunal was also directed to provide the Minister with an annual status report on the investigation process. In the report, the Tribunal is to make recommendations to the Minister for any changes to the investigation process that it considers appropriate to maximize net economic gains for Canada.

On September 6, 1995, in the course of preparing for its first annual status report to the Minister, the Tribunal invited its stakeholders to comment on the investigation process and to make suggestions on how it could be improved. Comments were also invited on all matters dealing with the textile reference. Written comments were requested by September 22, 1995. Oral submissions were heard on October 18, 1995, with further written comments received from the Canadian Textiles Institute (CTI) on November 3 and 7, 1995.

This report describes the activities undertaken to date by the Tribunal further to the textile reference and the resources that have been allocated to the program. It reports on the fall 1995 consultations and offers Tribunal comments regarding various elements of the program. The Tribunal also offers observations designed to ensure that the program maximizes net economic gains for Canada.

WORKLOAD - OCTOBER 1, 1994, TO SEPTEMBER 30, 1995**Requests by Industry Sector**

During the 12-month period from October 1, 1994, to September 30, 1995, the Tribunal received 73 requests for tariff relief from domestic producers. Sixty-eight percent of these requests originated from producers in the apparel industry, although requests were also received from firms in other industry sectors, such as textile, footwear and furniture. Details on the origin of these requests, by industry sector, is provided in Table 1.

	Apparel	Footwear	Furniture	Textile	Other	Total
Number	50	2	3	5	13	73
Percent	68	3	4	7	18	100

Geographic Distribution

Slightly more than half of all requests for tariff relief originated in Quebec and Ontario. This is hardly surprising, as these two provinces have the highest concentration of apparel manufacturers in Canada. Somewhat unexpected, however, is that 41 percent of all requests originated in British Columbia.¹ No requests were received from producers in Atlantic Canada. Details on the geographic origin of these requests is presented in Table 2.

	British Columbia	Prairies	Ontario	Quebec
Number	30	6	9	28
Percent	41	8	12	39

Requests by Type of Input

While requests for tariff relief have covered a broad spectrum of the textile inputs specified in the Minister's reference, the preponderance of requests (90 percent) have been for tariff relief on fabric inputs, as opposed to yarn and fibre inputs. Table 3 presents a breakdown of the requests by type of input.

1. Two requesters accounted for most of the requests received from British Columbia.

Table 3
REQUESTS BY TYPE OF INPUT

	Fibre	Yarn	Fabric	Other	Total
Number	0	5	66	2	73
Percent	0	7	90	3	100

As a general rule, duties on fibres are lower than duties on yarns, and duties on yarns are lower than duties on fabrics. Not surprisingly, therefore, most of the requests for tariff relief have arisen in those industry sectors which pay the highest duty rates for their textile inputs. The majority of these requests have been for fabrics. Fabrics, of course, tend to be higher value-added than yarns, and yarns are higher value-added than fibres. As such, the duty effect on imports of these three inputs is progressive and compounded from fibres through yarns to fabrics, with both higher values for duty and higher rates of duty coming into play at each successive level of value added.

Requests by *Customs Tariff* Chapters

The terms of reference limit the application of the textile program to certain chapters of Schedule I to the *Customs Tariff*.² Table 4 shows the distribution, by chapter, of all requests received.

Table 4
DISTRIBUTION OF REQUESTS BY *CUSTOMS TARIFF* CHAPTER

Chapter	Number of Requests	Percent
39	2	3
40	1	1
51	3	4
52	8	11
53	1	1
54	7	9
55	10	14
56	6	8
58	2	3
59	2	3
60	32	43
70	0	0
Total	<u>74</u> ¹	<u>100</u>

1. One request covered two chapters.

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

Over 40 percent of all requests covered textiles of Chapter 60, "Knitted or Crocheted Fabrics." Also generating significant interest were products of Chapter 55, "Man-Made Staple Fibres" (14 percent), Chapter 52, "Cotton" (11 percent), Chapter 54, "Man-Made Filaments" (9 percent) and Chapter 56, "Wadding, Felt and Nonwovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof" (8 percent).

During the year, two requests were rejected, as they fell outside the scope of the program (Chapters 39 and 40).

It should be noted that not all textile inputs used in Canadian production are covered by the textile program. One example was brought to the Tribunal's attention by Canadian Capote Company. This firm imports wool blankets which are cut and sewn to produce a replica of a voyageur blanket coat. The blankets, classified in Chapter 63 of the *Customs Tariff*, are outside the terms of reference and, thus, ineligible for tariff relief.

Monthly Distribution of Requests

The number of requests received has fluctuated considerably on a month-to-month basis. The initial delay in receiving requests may have been due, in part, to the need for domestic producers to familiarize themselves with the guidelines distributed by the Tribunal on September 30, 1994. As well, some parties may have delayed their submissions until a number of investigations had been completed and the process followed by the Tribunal had become more familiar.

In any event, only two requests were received by the Tribunal in 1994. Beginning in 1995, as Table 5 shows, the number of requests received by the Tribunal began to increase rapidly, culminating in a high of 23 requests received in June alone.

	<u>1994</u>			<u>1995</u>									Total
	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	
Number	0	1	1	4	4	11	1	8	23	5	7	8	73
Percent	0	1.0	1.0	5.5	5.5	15.0	1.0	11.0	32.0	7.0	10.0	11.0	100

Processing of Requests

Table 6 shows the length of time between the receipt of a request for tariff relief and the commencement of an investigation by the Tribunal.

	Up to 30	31 to 60	61 to 90	Over 90	Total
Number	3	10	8	8	29
Percent	10	34	28	28	100

The time between the date of the initial receipt of the request and the commencement of an investigation has varied considerably, depending on the extent to which the required information was lacking, the timeliness of the response by the requester to the Tribunal's appeal for the missing information and the availability of the Tribunal's staff to undertake the investigation. In 44 percent of all investigations, it took less than two months from receipt of the request to the commencement of an investigation, while in 72 percent of all investigations, it took less than three months. As of September 30, 1995, there were 41 requests awaiting commencement of investigations.

Length of Investigations

The length of time from the date on which an investigation is commenced to the date on which the Tribunal reports on that investigation to the Minister is specified in the terms of reference. The terms of reference stipulate that an investigation should be completed within 60 or 120 days from the date of receipt of a properly documented request, depending upon the urgency of the request. On a number of occasions, the Tribunal's report to the Minister exceeded those deadlines because, in the conduct of the investigation and upon obtaining laboratory analysis from the Department of National Revenue (Revenue Canada), the Tribunal found that the product under investigation was improperly described. This necessitated issuing an amendment to the notice of commencement of investigation. On the other hand, on some occasions, usually when requests were unopposed, the Tribunal issued its report to the Minister before the mandated deadline.

A few requests for tariff relief asked that investigations be completed within a 60-day time period. These requests alleged the existence of "critical circumstances," defined by the Tribunal as "circumstances that would cause harm which would be difficult to repair if action were not taken expeditiously." Of all such requests, only one was accepted by the Tribunal as satisfying the criterion of "critical circumstances." This investigation imposed a significant burden on all parties to the investigation, as well as on the Tribunal. The remaining investigations were all commenced under the 120-day timetable.

Reports to the Minister and Recommendations

As of September 30, 1995, the Tribunal had issued 11 reports to the Minister. In 10 instances, the Tribunal recommended that the tariff relief requested be granted. Of those 10 recommendations for tariff relief, permanent tariff relief was recommended in 5 instances, temporary tariff relief for a 3-year period was recommended in 3 instances and temporary tariff relief for a 2-year period was recommended in 2 instances.

One request was found not to maximize net economic gains for Canada, and a recommendation was made that the request for tariff relief not be granted.

As of September 30, 1995, four recommendations had been implemented by the Governor in Council on the recommendation of the Minister, pursuant to paragraph 68(1)(a) of the *Customs Tariff*.

RESOURCE ALLOCATIONS

Members

To date, all Tribunal recommendations to the Minister have been made by three-member panels. Under recent changes to the *Canadian International Trade Tribunal Regulations*,³ the Chairman may appoint one-member panels to consider requests for tariff relief. However, three-member panels will continue to be appointed in the foreseeable future.

Staff

In the Research Branch, the staff originally assigned to investigations of requests for tariff relief comprised 1 research director and 4 research officers. By the end of September 1995, 2 research directors had been assigned full-time to the textile reference, assisted by a complement of 10 research officers. Notwithstanding this heavy commitment of resources, the backlog of cases continues to grow.

In the Legal Services Branch, all eight lawyers have been assigned cases. These assignments constitute an addition to the lawyers' other work in the areas of dumping, appeals and procurement.

The textile reference has also generated substantial volumes of work throughout the Secretariat Branch, principally in the Registrar's Office, Editorial Services and the Registry and Mailroom.

It is estimated that the program necessitated the expenditure of 13 full-time equivalents, excluding members who were assigned to cases. This represents over 15 percent of the Tribunal's full complement (excluding members).

Operating Expenditures

During the period from October 1, 1994, to September 30, 1995, close to \$56,000 was spent on operational activities in support of the textile reference. These expenditures covered, principally, the issuance of notices in the Canada Gazette, travel expenses, translation services and the provision of statistical data.

3. SOR/95-27, December 22, 1994, Canada Gazette Part II, Vol. 129, No. 1 at 96.

REPORT ON THE FALL 1995 CONSULTATIONS**Participants**

In preparation for the first annual status report, on September 6, 1995, the Tribunal sent letters to stakeholders and certain government departments seeking comments and suggestions regarding the textile reference. The principal stakeholders contacted were the CTI, the Canadian Apparel Federation (CAF), the Ontario Furniture Manufacturers Association, the Canadian Council of Furniture Manufacturers, the Retail Council of Canada, the Retail Task Force (RTF), the Canadian Society of Customs Brokers and the Canadian Importers Association Inc. Also contacted were various brokers and trade consultants that have been active in submitting requests for tariff relief on behalf of their clients. The government departments that were contacted were the Department of Industry (Industry Canada), Revenue Canada, the Department of Finance and the Department of Foreign Affairs and International Trade (Foreign Affairs and International Trade).

Prior to the public consultations, written submissions were received from the CTI, CAF, The Industry Government Relations Group (IGRG), the RTF, Industry Canada, Revenue Canada and Foreign Affairs and International Trade. In attendance at the public consultations were the CTI,⁴ CAF⁵ and the IGRG.⁶

Submissions

In its letter of September 6, 1995, the Tribunal sought input on the investigation process and suggestions on how it could be improved. While informing respondents that they were free to comment on any aspect of the process, the Tribunal identified certain subjects on which it was particularly interested in receiving submissions. The submissions received by the Tribunal, as supplemented during its public consultations, are organized under these subjects and others raised by the respondents. They can be found at Appendix III of this report.

Based on these submissions, it is apparent to the Tribunal that the textile and apparel industries hold significantly different views on the tariff relief process. Clearly, this is a reflection of the different interests held by the two groups and a result of the recommendations that, to date, have been made to the Minister.

While CAF is generally pleased with the Tribunal's investigations, it made several suggestions for adding greater certainty, convenience and timeliness to the process. It reminded the Tribunal that its primary objective is having an even-handed and transparent process and that, if it exercises its mandate in this manner, investor confidence in Canada should be maintained. CAF argued that, because apparel

4. In attendance were: Mr. Eric Barry and Ms. Elizabeth Siwicki of the CTI; Mr. William L. Holt, Mr. Marcel Thibault and Ms. Lucie Brassard of Consoltex Inc.; Mr. Charles H. Hantho of Dominion Textile Inc.; Ms. Lise Charron of Dominion Specialty Yarns; Mr. Jonathan R. Hurstfield-Meyer of Cleyn & Tinker Inc.; and Mr. G. Patt MacPherson of Corporation House.

5. In attendance were: Mr. Jack Kivenko and Mr. Stephen Beatty of CAF; Mr. Alvin Segal of Peerless Clothing; and Mr. Don Cardi of Paris Star Inc.

6. In attendance was Mr. Michael Teeter.

manufacturers purchase a minority of the sales of the textile industry's products, even if complete tariff relief were provided on the import of all woven textiles for use in manufacturing apparel, there would not be a significant impact on the textile sector as a whole.

In the conduct of its investigations, it is essential for the Tribunal to accurately identify the interested parties to a given request for tariff relief. In this regard, CAF suggested that the Tribunal hear from retailers or other parties that are knowledgeable about the market where cases hinge on claims of substitutability or market conditions. For CAF, the issue of substitutability is straightforward and is a function of market realities; both textile and apparel manufacturers must produce what the customer wants or lose the sale to someone that will. In CAF's view, the key test for substitutability are the answers to two questions: "Would you buy it? Would you wear it?" Moreover, as one of the CAF representatives indicated, while apparel manufacturers would always prefer to buy their textiles in Canada, the appropriate fabric has to be available.

In contrast, the CTI held strong reservations and provided suggestions that it believed would enhance the transparency, relevance and credibility of the process. Particular misgivings were voiced about the Tribunal's method of calculating costs and benefits, the cost and feasibility of administering a particular recommendation and the appraisal of substitutability. According to the CTI, if two products compete with each other in the marketplace, they are substitutable for each other.

Finally, CAF argued that, while it is true that the textile industry invests heavily in certain types of equipment, CAF members must also invest large sums in new systems and technology to remain competitive and that their largest investments are in their employees.

From the CTI's perspective, textile tariffs, which have already been significantly reduced, are again under attack. Specifically, the principles applied by the Tribunal in its investigations are threatening the integrity and value of these tariffs. The result of the Tribunal's recommendations, predicts the CTI, will be to create competitive advantages and disadvantages in the marketplace and undermine investment in Canada.

TRIBUNAL COMMENTS ON THE PROGRAM

Effects of the Program to Date

In the first year of the program, the government implemented four Tribunal recommendations for tariff relief. They covered imports worth \$8.4 million, on which \$1.1 million of customs duties were collected. These imports accounted for 0.25 percent of all imports (\$3.3 billion) reported during the year under Chapters 51 to 56 and Chapters 58 to 60 of the *Customs Tariff*.⁷

Workload

The sporadic and unpredictable nature of the timing and volume of requests for tariff relief by interested parties has placed increasing pressures on the Tribunal's ability to respond in a timely fashion to those requests. Those pressures have been particularly focused on research and administrative staff. The receipt of a large number of requests, in a short time period, also produces an immediate inventory of cases which are placed in a queue for processing and commencement of investigation.

Over the course of the first full year, the Tribunal responded to the large volume of requests by more than doubling the staff originally assigned to the program. This was only possible because the work generated by statutory mandate in that particular period was lower than in previous years. If such resource allocations do not continue to be possible and if the textile tariff relief program continues to attract a high volume of requests, it will not be possible to process cases in as timely a fashion. However, the Tribunal is continuously looking for ways to improve its procedures in order to enhance its ability to investigate requests in a timely manner. In this regard, it is the Tribunal's intention to continue consolidating requests into a single investigation, whenever feasible, if circumstances of fairness permit.

The CTI has recommended that the terms of reference be amended to require the Tribunal, prior to commencing an investigation, to issue a notice of intent to commence an investigation and to provide 30 days for receipt of comments. This would allow, if submitted, interested parties to have an opportunity to provide advice on possible alternatives to an investigation that would expedite a solution and reduce the cost to all parties. Industry Canada also made a similar suggestion to the Tribunal. While this procedure would reduce some of the burden associated with uncontested requests, the reality is that most of the requests that have been filed to date have been contested. The Tribunal questions whether, in the short time period envisaged, the domestic industry could find an acceptable solution (e.g. offer acceptable substitute textile products to the requester) that would result in the withdrawal of the request.

However, the Tribunal sees merit in publicizing the requests much earlier than is currently done (i.e. only at the commencement of the investigation). Consequently, in the near future, the Tribunal will be looking at ways to inform its stakeholders, early in the process, of the requests that have been received and of the products that they cover. This should allow parties with similar concerns to contact the Tribunal, thereby ensuring that requests covering closely related products are investigated simultaneously. It would also enable

7. These chapters cover over 95 percent of all requests received by the Tribunal in the first year of the program. The terms of reference also allow for some textile inputs imported under Chapters 39, 40 and 70 to be considered for tariff relief if used in manufacturing operations.

domestic producers to inform the Tribunal if the requests will not be opposed, again saving time and expense for all parties involved.

The Tribunal would like to note that, on a number of occasions, when the requests were unopposed, the CTI provided assistance to resolve the case without requiring a full Tribunal investigation. This helped in relieving some of the time pressures felt during the year due to the large number of requests received.

Finally, the Tribunal will continue to make every effort to shorten the period of time between the receipt of a request and the commencement of an investigation. However, consideration must be given to the fact that this program is demand-driven and that the Tribunal faces significant resource constraints.

Product Description

As explained earlier, during the first year, several problems with the description of the textile inputs contained in requests for tariff relief were noted. These problems ranged from the requester having provided the wrong tariff item and incomplete (and sometimes improper) product description to a request that the Tribunal expand the scope of the investigation, after commencement, to cover additional products for which tariff relief was desired. Often, this required issuing an amendment to the notice of commencement of investigation and providing additional time for questionnaire responses and submissions. This resulted, generally, in delaying the report to the Minister.

The Tribunal recently implemented changes in its procedures which should resolve most of these problems. When a request is received, textile samples are now sent immediately to Revenue Canada for laboratory analysis and advice on tariff classification. After receipt of Revenue Canada's report, any inconsistencies in the tariff item or product description are discussed with the requester; an investigation will not be commenced before a clear and precise product description is available.

The Tribunal generally agrees with the suggestion made by the CTI that no changes to the scope of a request be made during the course of an investigation. The Tribunal will not expand the scope of a request, unless proper notification and extended deadlines for filing submissions are given to all interested parties.

Substitutability

The issue of substitutability is at the core of Tribunal investigations. While helpful, the terms of reference provide only limited guidance in resolving problems of substitutability. From the outset, the Tribunal has given considerable weight to the Minister's directive that substitutability should be viewed in terms of a number of critical factors, including commercial availability of directly competing textile products and market acceptance. In its recommendations to date, the Tribunal has started to develop a set of factors that need to be considered in arriving at a conclusion on substitutability.

One of the first factors that needs to be considered when trying to establish whether fabrics are substitutable is their technical description. For example, the Tribunal found that, in the health care industry, and more particularly in the manufacture of surgical gowns and drapes, the degree to which domestically produced fabrics are substitutable for an imported fabric is limited, to a large extent, by objective

performance standards.⁸ In this particular case, the Tribunal found that the domestically produced and imported fabrics were fully substitutable.

The Tribunal also considers “market acceptance” to be a critical factor in analyzing substitutability. Although two fabrics may have similar technical descriptions, tariff classifications and certain other physical or end-use characteristics, consumers may perceive these fabrics to be different and, therefore, not directly substitutable. In Request Nos. TR-94-011 and TR-94-019,⁹ for example, the Tribunal expressed the view that the fashion industry operates on a lower degree of substitutability (defined in terms of end use and functionality of the fabric) and, therefore, searches for, and insists upon, new fabrics which are, or are soon expected to be, demanded by consumers.

The Tribunal believes that “price” is an essential factor in analyzing substitutability that is linked to market acceptance. Consumers of certain fabrics are willing to pay more for characteristics that they feel are available in one fabric but not in another. Therefore, evidence which shows that one fabric commands a different price from another would tend to indicate that the two fabrics are not direct substitutes, even though, functionally, the fabrics are used in the same end product, e.g. skirts or pants. Here, the principal issue is the extent of the price difference between the imported and the domestic product and how it influences purchasing decisions.

Finally, the Tribunal considers that the “ability to supply” is an important factor. Mere assertions on the part of domestic producers of the potential ability to supply a certain fabric are not sufficient. The Tribunal needs evidence that domestic producers have actually furnished or are capable of furnishing domestic users with an identical or substitutable product or that they are in the process of establishing the supply of a substitutable product for domestic users.

The Tribunal’s consultations highlighted the conflicting views of the apparel and textile industries on the definition of substitutability, especially as expressed in the recommendations on Request Nos. TR-94-011 and TR-94-019. While CAF raised no objection to the Tribunal’s views, the CTI strongly expressed a different opinion. The CTI believes that many different textiles compete with one another in the markets for specific end uses and that the products made from them also compete with one another. The CTI further argues that the reality is that the Tribunal is less likely to find domestic production of goods that are identical to the goods for which tariff relief is requested and more likely to find domestic production of like or competing goods. In short, the CTI would like to see the Tribunal use a broader definition of substitutability and suggests that the challenge facing the Tribunal is really to assess whether or not certain textiles compete with one another and, based on that assessment, whether or not the tariff can be removed without providing an advantage to one textile and its customers at the expense of another textile and its customers.

8. See Report to the Minister of Finance: Request for Tariff Relief by Healtex Manufacturing Inc. Regarding Mertex Plus Fabric, Request No. TR-94-015, October 2, 1995.

9. See Report to the Minister of Finance: Requests for Tariff Relief by Château Stores of Canada Ltd. and Hemisphere Productions Inc. Regarding Armani Gabardine, September 19, 1995.

Decisions on substitutability have a direct impact on net economic benefit calculations. Where the Tribunal finds that there are no Canadian-produced substitutes, it usually also finds that there are few, if any, costs of granting tariff relief, and it concludes that the net economic benefits are unambiguously positive.

The definition of substitutability will certainly evolve as additional factors relevant to this subject are considered by the Tribunal in future cases.

Net Economic Gains

According to the terms of reference, the Tribunal must assess the economic impact on domestic producers, on a “commercial cost/benefit” basis, of reducing or removing a tariff and make recommendations that will maximize net economic gains for Canada. The assessment of the economic impact of granting tariff relief has proven to be particularly challenging for the Tribunal. Not surprisingly, the Tribunal’s assessments have been the subject of considerable commentary before, during and after the consultations, particularly from the CTI.

The Tribunal acknowledges that these assessments, by their very nature, have not been and never will be perfect, but that they have been evolving with experience and could be further improved if better information were available. In its recommendations to date, the Tribunal has taken into account a variety of factors in these assessments, including its staff’s preliminary analyses of the quantifiable costs and benefits of granting tariff relief to textile producers and users (but not to governments, although potential tariff revenue losses are normally identified), as well as more qualitative factors. On the other hand, the assessments have not, to this point, considered the impact that tariff relief would have on expanding markets for goods produced using lower-cost textile inputs or indeed whether the cost savings from lower or no tariffs would flow through to consumers. Some commentators suggest that these latter factors should be taken into account by the Tribunal.

Some of the difficulties encountered by the Tribunal in attempting to conduct these assessments arise because reliable information is not submitted to the Tribunal by participants nor does it appear to be generally available. This is compounded by the reluctance of certain participants to divulge information which they feel is confidential. The quality of the Tribunal’s assessments can only be as good as the information that it has upon which to base its decisions.

The Tribunal has always endeavoured to conduct the best economic analysis that its expertise and the information available will permit. In view of the comments made in the fall 1995 consultations, it is the Tribunal’s intention to review carefully the suggestions received and to see how its analysis of net economic gains can be further improved.

Confidentiality

Confidentiality is an issue in three principal areas: product description, the provision of samples and financial information. With the availability of Revenue Canada’s public information on product characteristics and tariff classification before the commencement of future investigations, it is felt that there will be enough information on the public record to prepare the notice of commencement of investigation and to properly inform parties of the product in issue.

With regard to samples, the Tribunal has been faced with requests to give confidential treatment to some of the samples submitted by both requesters and domestic producers. In all the investigations commenced to date, the Tribunal was successful in having the requesters provide “public” samples. However, the Tribunal has been less successful with parties producing allegedly substitutable textiles. This has created situations where, for instance, a Canadian textile producer has obtained a sample of an input for which tariff relief was requested, but has refused to provide to other parties a sample of an alleged substitute. It is difficult for the Tribunal to understand how a producer could allege that its product is substitutable and yet refuse to provide a sample to a potential customer.

While the Tribunal always attempts to balance the competing values of confidentiality and fairness, only in exceptional circumstances will “confidential” samples be accepted. One such case could be when fabrics are in their development stage, and public release would cause harm to the party submitting the sample.

Critical Circumstances

The Tribunal conducted one investigation, Request No. TR-94-009,¹⁰ under the 60-day option. The Tribunal accepted the requester’s claim of “critical circumstances” shown through operational losses caused by the customs duties paid on the imported fabric and the possibility of the plant ceasing production of garments made from this fabric if the duties were not removed. The 60-day investigation created a serious burden on parties in responding to the questionnaires and on staff in preparing its report within the very tight deadlines imposed under a 60-day timetable. In the end, the Tribunal did not meet the 60-day limit, having to provide, at the request of the CTI, a translation of the staff investigation report. This caused the Tribunal to revise the second half of the schedule of events, and the recommendation was ultimately made some 90 days after commencement of the investigation.

The CTI has recommended to the Minister the elimination of the 60-day “critical circumstances” option for the conduct of an investigation. Industry Canada has made a similar recommendation to the Tribunal. On the other hand, the RTF has requested that all investigations be completed within a 60-day period.

The Tribunal believes that it is essentially impractical to conduct, within 60 days, an investigation that respects the rights of all parties and allows for the proper collection of the information necessary for a sound Tribunal recommendation. The stringent deadlines imposed under such a timetable do not allow sufficient time to gather a complete record or allow for full discussion of the issues. The Tribunal would prefer that more time be given for conducting such investigations. Furthermore, it is the Tribunal’s intention to offer some examples of “critical circumstances” when it revises the guidelines governing the textile program.

10. See Report to Minister of Finance: Request for Tariff Relief by Équipement Saguenay (1982) Ltée Regarding Vinex FR-9B Fabric, June 5, 1995.

Retroactivity

Most requesters ask that the granting of tariff relief be retroactive to the date of the request, or earlier. In its first case, Request No. TR-94-001,¹¹ in responding to a request for retroactive application of the tariff relief, the Tribunal concluded that there were no extraordinary competitive circumstances warranting such a recommendation and, therefore, refused to make such a recommendation. The Tribunal also refused to make such recommendations in all subsequent cases.

The Tribunal's position on this issue remains unchanged. Only in exceptional circumstances will the Tribunal consider recommending that retroactive tariff relief be granted to a requester.

Standing as Domestic Producers

The filing of requests for tariff relief is limited to domestic producers engaged in the purchase of, or proposing to purchase, a textile input for production, or any person or association acting on their behalf. However, the term "domestic producers" is not defined in the terms of reference or in the Textile Reference Guidelines.

In Request No. TR-94-005, Hemisphere Productions Inc., and Request No. TR-94-020, Sunsoakers Inc., the Tribunal granted producer status to the requesters, although all their garments were produced by subcontractors. Prior to commencement of the Tribunal's investigations, these requesters were able to demonstrate to the Tribunal's initial satisfaction that they controlled the production of the finished products and their marketing.

During the year, one requester was asked to demonstrate a substantial commitment to production in Canada. The Tribunal sought evidence that it was in the process of establishing production in Canada through such things as the renting or purchasing of plant facilities, a commitment to purchase or lease manufacturing equipment and the hiring of personnel, before the Tribunal was prepared to commence an investigation of the request.

Duration of Tariff Relief

The CTI has recommended to the Tribunal that any recommendations for tariff relief be for a maximum period of two years, subject to review and possible extension. Furthermore, the CTI recommended the establishment of tariff rate quotas based on a requester's estimates of anticipated imports during a particular period. This mechanism, argues the CTI, would ensure that there would not be an unintended "explosion" of imports attracted to the benefits of the low tariff protection.

While these measures would be beneficial to the textile industry, the Tribunal believes that they are too restrictive to warrant a recommendation to the Minister. The Tribunal feels that there are benefits to be gained by having more flexibility in the duration of recommendations. For example, in Request No. TR-94-001, it appears unlikely that there will be any production in Canada of the type of yarn in issue in

11. See Report to Minister of Finance: Request for Tariff Relief by Canatex Industries (Division of Richelieu Knitting Inc.) Regarding Certain Nylon Filament Yarns, March 24, 1995.

the foreseeable future. If tariff relief had been granted for only two years, this would have caused the requester to file a new request less than 24 months after the initial relief had been granted, even though no claim of new or resumed production of the textile input would have been made by the Canadian industry.

However, the Tribunal also feels that domestic producers should be allowed to petition the Tribunal with regard to orders granting permanent tariff relief, if circumstances in the marketplace change sufficiently to warrant possible reinstatement of tariff protection. Currently, requests to commence an investigation for the purpose of recommending an amendment to a tariff reduction order are limited to orders granting temporary tariff relief.

The cost of making all recommendations reviewable, however, would be a greater workload for the Tribunal, increased burden on participants and, possibly, longer delays facing new requests for tariff relief.

Scope of Reference

As mentioned earlier, the case of Canadian Capote Company was brought to the Tribunal's attention. This firm uses wool blankets as inputs in the production of a replica of voyageur blanket coats. These blankets are classified under Chapter 63 of the *Customs Tariff* and thus, technically, fall outside the mandate of the Tribunal's reference. Given the spirit of the reference, however, the Tribunal believes that it would be useful if the terms of reference allowed for the investigation of requests of this nature.

Circumvention

The CTI is concerned with the enforcement by Revenue Canada of tariff relief measures implemented further to a Tribunal recommendation. The CTI argues that there is a possibility that these measures could be circumvented. For example, importers could obtain tariff relief by declaring, at Canada Customs, an end-use application that benefits from tariff relief when the real end use of their imports does not qualify for tariff relief.

While the Tribunal understands the CTI's concerns, the reality is that Revenue Canada is currently responsible for the enforcement of hundreds of tariff measures, of which those arising from Tribunal recommendations are only a very small subset. It is Revenue Canada's responsibility to ensure that there are appropriate administrative procedures to enforce any tariff relief measures put in place by the government.

Time Frames

The textile program relies on the participation of the textile and apparel industries. The process calls for questionnaires to be filled out and submissions prepared by those directly concerned with an investigation. These submissions, in turn, are served on all parties to the proceedings. This procedure, if followed, ensures that the process is fair and transparent, that proper testing of the evidence is done and that the Tribunal takes into account, in its recommendation, all the information available. Because the process relies so heavily on the active participation of all parties, it is essential that investigation deadlines be respected. During the year, in one instance, a submission was returned to a party because it was filed too late in the investigation proceedings.

Due to the importance of parties submitting information within the time frames established, the Tribunal will begin to enforce those deadlines by whatever means that it has available, including not considering the information if it is filed late.

Public Hearings

In the Textile Reference Guide, the Tribunal indicated that public hearings would not be required in normal circumstances, but that a party may request such a hearing. To date, the Tribunal has received no requests to hold a public hearing.

However, it appears to the Tribunal that public hearings could, in certain circumstances, be a useful tool to resolve issues arising from its investigations. Therefore, the Tribunal will be looking, in the next year, at the feasibility of holding short, half-day public hearings to assist in resolving issues still outstanding after parties and requesters have filed their final submissions. These hearings would not be confrontational, and parties could attend without counsel if they so wished.

Questionnaires

A number of suggestions were made to improve the questionnaires. The Tribunal will review the questionnaires with the industries concerned, with a view towards keeping a balance between the information that the Tribunal requires to conduct a thorough assessment of substitutability and commercial benefits and costs and the burden that these questionnaires place on the various parties. It is the Tribunal's objective to make all questionnaires more user-friendly; however, it is not expected that this will require major changes.

Training

The textile and apparel industries are complex. In order to increase its knowledge of the textile industry, most of the Tribunal's research staff has undertaken introductory training in textile production, covering concepts such as fibres, yarns, fabric construction, dyeing, finishing, etc. The Tribunal is now putting together a similar program for members and other staff. This program will include visits to a number of plants in order to demonstrate the range of production and finishing operations. The assistance of the textile industry will be sought to organize the visits.

The Tribunal will develop a similar program to cover the apparel industry.

Procedural Changes Already Implemented

The one major change implemented since the inception of the program has been the submission of textile samples to Revenue Canada upon receipt of a request.

Second Annual Status Report

It is the Tribunal's wish to again consult with its stakeholders when the second annual status report to the Minister is being prepared. To this end, the Tribunal will provide, by mid-1996, public notification so that all interested parties can adequately prepare and provide input.

Appendix I
SUMMARY OF INVESTIGATIONS COMMENCED AS OF SEPTEMBER 30, 1995

Request No.	Requester	Textile Input	Tariff Item/ Classification No.	Date of Commencement of Investigation	Date of Recommendation	Status/ Recommendation
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	yarn	5402.41.10	November 25, 1994	March 24, 1995	Permanent tariff relief
TR-94-002	Kute-Knit Mfg. Inc.	yarn	5509.53.00	February 15, 1995	July 5, 1995	Three-year tariff relief
TR-94-004	Woods Canada Limited	fabric	5208.52.90	February 8, 1995	June 8, 1995	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	fabric	5407.60.90	February 22, 1995	June 22, 1995	Three-year tariff relief
TR-94-007	Woods Canada Ltd.	fabric	5407.42.00.20	March 8, 1995	July 6, 1995	No tariff relief
TR-94-008	Château Stores of Canada Ltd.	fabric	6002.93.00	April 7, 1995		
TR-94-009	Équipement Saguenay (1982) Ltée	fabric	5512.99.00	March 3, 1995	June 5, 1995	Three-year tariff relief
TR-94-010	Palliser Furniture Ltd.	fabric	5806.20.00	April 12, 1995	August 23, 1995	Permanent tariff relief
TR-94-011	Château Stores of Canada Ltd.	fabric	5515.11.00.00	April 28, 1995	September 19, 1995	Two-year tariff relief
TR-94-012	Peerless Clothing Inc.	fabric	5309.29.00	April 21, 1995		
TR-94-013	MWG Apparel Corp.	fabric	5513.31.00 5513.32.00 5513.33.00	May 26, 1995		
TR-94-014	Hi Fibre Textiles (Sugoi) Ltd.	fabric	6002.93.00.14	May 15, 1995		
TR-94-015	Healtex Manufacturing Inc.	fabric	5407.92.00	June 2, 1995		
TR-94-016	MWG Apparel Corp.	fabric	5208.42.90 5208.43.00 5208.49.00	May 26, 1995		
TR-94-017	Elite Counter & Supplies	fabric	3921.90.21.90	May 5, 1995	August 31, 1995	Permanent tariff relief
TR-94-018	Elite Counter & Supplies	fabric	3921.90.21.90	May 5, 1995	August 31, 1995	Permanent tariff relief
TR-94-019	Hemisphere Productions Inc.	fabric	5515.11.00.00	April 28, 1995	September 19, 1995	Two-year tariff relief
TR-94-020	Sunsoakers	fabric	6002.30.90	June 9, 1995		
TR-95-002	J.A. Besner & Sons (Canada) Ltd.	fabric	5407.53.00	June 30, 1995		
TR-95-003	Landes Canada Inc.	fabric	5603.00.99	July 12, 1995		
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	fabric	5208.52.90.90	July 28, 1995		
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	fabric	5513.41.00.10	August 15, 1995		
TR-95-006	Pelion Mountain Products Ltd.	fabric	5903.20.20.21	August 11, 1995		

Request No.	Requester	Textile Input	Tariff Item/ Classification No.	Date of Commencement of Investigation	Date of Recommendation	Status/ Recommendation
TR-95-007	Parapad Inc.	fabric	5603.00.99.30	August 17, 1995		
TR-95-008	Parapad Inc.	fabric	5602.10.99.00	August 17, 1995		
TR-95-009	Peerless Clothing Inc.	fabric	5408.22.10.00 5408.22.90.90 5408.32.00.90	August 25, 1995		
TR-95-011	Louben Sportswear Inc.	fabric	5408.32.00.90	September 20, 1995		
TR-95-012	Perfect Dyeing Canada Inc.	yarn	5509.32.00	September 29, 1995		
TR-95-013	Doubletex	fabric	5208.11.10 5208.11.90 5208.12.00 5208.13.00 5208.19.00 5208.21.00 5208.22.10 5208.22.90 5208.23.00 5208.29.00 5209.11.00 5209.12.00 5209.19.00 5209.21.00 5209.22.00 5209.29.00	September 27, 1995		

Appendix II
IMPLEMENTATION OF TARIFF RELIEF RECOMMENDATIONS AS OF
SEPTEMBER 30, 1995

Request No.	Requester	Order in Council	Date
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	Partially oriented filament yarn (POY), solely of nylon, unbleached or solution-dyed, measuring less than 50 tex, of tariff item No. 5402.41.10, for use in Canadian manufactures (Code 4077)	May 30, 1995
TR-94-004	Woods Canada Limited	Woven flannel fabric, solely of cotton, printed, of tariff item No. 5208.52.90, for use as inner lining in the manufacture of sleeping bags (Code 4232)	July 26, 1995
TR-94-005	Hemisphere Productions Inc.	Woven fabric, pointed twill weave, dyed, solely of polyester filament yarns measuring 155 decitex or more, with a twist of 960 or more turns per metre, having in the warp 157 or more yarns per 10 cm, and in the weft 315 or more yarns per 10 cm, of tariff item No. 5407.60.90, for use in the manufacture of women's apparel (Code 4242)	July 26, 1995
TR-94-009	Équipement Saguenay (1982) Ltée	Woven fabric, containing 83% or more by weight of vinal staple fibres and 13% or more of polynosic staple fibres, of tariff item No. 5512.99.00, for use in the manufacture of protective outerwear worn in high-temperature applications in aluminum plants (Code 4282)	July 26, 1995

Appendix III
SUMMARY OF SUBMISSIONS TO THE TRIBUNAL DURING THE FALL 1995
CONSULTATIONS

Participation in the Investigations

CAF suggests that the Tribunal expand the class of interested parties or otherwise allow for submissions from retailers or other parties with knowledge about the marketplace.

The RTF suggests that retailers be recognized as interested parties so that they may participate in the investigations.

Industry Canada suggests that fabric converters (e.g. dyers and finishers) be considered producers and be given greater consideration when assessing Canadian capabilities.

The IGRG suggests that, prior to the Tribunal making a recommendation, parties be given the opportunity for a full and open discussion of the points that other parties raise in response to the staff investigation report.

The Commencement of Investigations

CAF suggests:

- that the time between the receipt of a request and the commencement of an investigation be shortened;
- that the Tribunal not assign a case number until the request is properly documented; and
- that the Tribunal establish some priority for requests determined to be of an urgent nature.

The CTI suggests:

- that the terms of reference be amended to require the Tribunal to issue a notice of intent to commence an investigation and to provide 30 days for receipt of comments (which will give interested parties an opportunity to provide advice on possible alternatives to an investigation, to expedite a solution and to reduce costs to all parties); and
- that the Tribunal have the authority to reject a request for tariff relief on a textile input claimed to be unavailable from domestic production based on subjective or non-measurable attributes (as such a request would not be administrable).

Industry Canada suggests that the Tribunal issue a 30-day notice of intent to commence an investigation.

The Time Frame for Investigations

CAF suggests:

- that the Tribunal establish (1) criteria for “critical circumstances” under which it will conduct an investigation in 60 days and (2) criteria under which it will issue an interim report to the Minister; and
- that the Tribunal require parties to abide by the deadlines established in the Textile Reference Guidelines.

The CTI suggests the elimination of the 60-day “critical circumstances” option.

The IGRG suggests the elimination of the 60-day option, in part, because it is causing resource fatigue on textile producers.

The RTF suggests that all investigations be conducted within 60 days.

Industry Canada suggests:

- that the 60-day option be eliminated (however, as a condition, it states that recommendations should be retroactive to the date of a properly documented request); and
- that the Tribunal reset the date of commencement of an investigation when the scope of the investigation has been broadened (which will enable parties to tailor their responses to the revised parameters and give them sufficient time to respond).

The Investigation Process

CAF suggests:

- that questionnaires be renumbered or consolidated to permit submissions in a more narrative form;
- that the Tribunal establish criteria under which the review of an order for temporary relief will occur; and
- that the Tribunal be permitted to review a recommendation to the Minister prior to its implementation.

Industry Canada notes that there is a growing concern among domestic producers that the process has placed an inordinate burden on their resources.

Product Descriptions

The CTI suggests that the scope of a request be clearly established at the beginning of an investigation based on:

- a full and accurate description of the textile input and the applicable tariff classification, along with samples accompanied by a certificate from a qualified testing laboratory confirming that the samples meet the product description;
- no changes to the scope of the request during the course of the investigation; and
- a termination and, where appropriate, recommencement of any investigation based on revised information where discrepancies are identified during the course of an investigation.

The CTI also suggests that the costs associated with the analysis of a sample be borne by the requester (either through a qualified independent testing laboratory or on a cost-recovery basis through Revenue Canada), not by the federal treasury.

CAF suggests the inclusion of a rule calling for additional samples to be provided in cases where the textile input is a broad class of textile inputs.

The RTF suggests that requests for tariff relief be allowed for a class of textiles.

Revenue Canada suggests:

- that samples be provided to it for analysis prior to the commencement of an investigation; and
- that the nomenclature and terminology of the Harmonized Commodity Description and Coding System of tariff classification be used to describe a textile input (for example, use of the metric system for measurements or of decitex for yarn count).

Foreign Affairs and International Trade requests that the textile inputs be classified at the 10-digit level.

Product Substitutability

The IGRG suggests:

- that the Tribunal publish its decision-making parameters on this concept and others; and
- that retailers be able to provide useful information on substitutability.

The RTF suggests that the Tribunal put less emphasis on the concept of substitutability and greater emphasis on the market demand for a fabric.

Economic and Other Analyses

The CTI suggests:

- that the Tribunal's economic analysis include the amount of federal revenue foregone, plus the cost to Revenue Canada of administering the tariff relief measures; and
- that the Tribunal revisit its current method of calculating costs and benefits to producers and users so that it more accurately reflects the realities of the industry and marketplace.

The IGRG suggests:

- that there be stronger economic arguments in the recommendations to the Minister;
- that the Tribunal fully explore tariff regimes which effectively limit the potential for abuse; and
- that the Tribunal undertake a more complete assessment of "administrability" issues.

Industry Canada suggests:

- that the Tribunal consider the net impact of exchange rate variations in its economic analysis;
- that, because of the inherent problems that exist when using domestic and foreign price comparisons, such comparisons not be the determining factor in making a recommendation; and
- that, for purposes of clarifying the process, the methodology and criteria used to estimate costs and benefits be set out in clearer terms.

Recommendations to the Minister

CAF suggests that recommendations for tariff relief be retroactive to the date on which the request was made to the Tribunal.

The CTI suggests:

- that any tariff relief measure implemented as a result of a Tribunal recommendation not be broader than the scope of the textile input identified in a request, either with respect to product coverage or end use;
- that any tariff relief recommended and implemented be for an initial maximum period of two years; and
- that the Tribunal recommend tariff rate quotas based on a requester's estimate of anticipated imports during a particular period.

The IGRG suggests:

- that, when tariff relief is granted on a dyed or printed fabric, it also be granted on unbleached or bleached identical fabrics; and
- that the Tribunal provide guidelines, including circumstances, under which the textile industry can apply to the government to have a tariff reduction “snapped back” to previous levels.

Consultations

CAF suggests that the Tribunal regularly review matters of a purely administrative nature with interested parties in order to facilitate its proceedings and to assist in the revision or elaboration of its procedures.

The IGRG suggests:

- that, if the Tribunal establishes its decision-making parameters, there be a full airing and direction set for the relationship between product exclusivity and tariff policy; and
- that there be a full discussion on the question of quotas and fabric access.

Appendix IV
TRANSMITTAL LETTER AND TERMS OF REFERENCE

Mr. Anthony Eyton
Chairman
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue, West
16th Floor
Ottawa, Ontario
K1A 0G7

Dear Mr. Eyton:

I am writing, pursuant to Section 19 of the Canadian International Trade Tribunal Act, to direct the Canadian International Trade Tribunal, to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations. Recommendations flowing from its investigations should be consistent with Canada's international rights and obligations under its bilateral and multilateral trade agreements and should also maximize net economic gains for Canada.

Preamble

Due to the dynamic nature of the Canadian textile and apparel and other downstream industries, and the rationalization that has occurred in the textile industry, certain downstream industries have resorted increasingly to sourcing their textile manufacturing inputs offshore. As a result, the Department of Finance has been faced with an ever increasing number of requests for reductions in Canadian tariffs on textile fibres, yarns and fabrics.

To date, departmental reviews of requests for tariff relief on textile inputs have been primarily based on an assessment of the availability of similar or substitutable Canadian-produced goods. Changing market demands, and the inability of traditional availability assessments to meet industry demands, call for changes to the current review process to ensure that it best meets the competitive needs of Canadian business, while at the same time continuing to promote overall Canadian employment, production and investment. Requests for tariff relief now demand an evaluation on the basis of several criteria, including a market-based assessment of the capabilities of Canadian producers and the demands of Canadian and world markets. As well, due to rapidly changing "fashion seasons", and "just in time" delivery, lead times are tight and, therefore, the time frames to review requests are often much shorter than tariff reviews required in other sectors.

Terms of Reference

In the circumstances, I am directing the Tribunal to develop, by September 1, 1994, rules of procedures (after consulting with the textile and downstream industries and their respective associations) for the conduct of investigations required by the terms of this reference, through which domestic producers may apply in an inexpensive and cost effective manner to the Tribunal for tariff relief (reductions or removal) on the following

imported “textile” inputs that they use in their manufacturing operations: fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59, and 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.

Furthermore, once the procedures are in place, I am directing the Tribunal, in conducting these investigations, to:

- a) examine any properly documented request that it receives from a domestic producer for tariff relief on textile inputs used in its downstream manufacturing activities;
- 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,
- d) make recommendations, with reasons, on the appropriateness of reducing or removing the tariff. (Such recommendations, which clearly must be administrable on a cost effective basis, could range from permanent removal on complete tariff lines to company, fabric, time and/or “end-use” specific tariff provisions. Recommendations for temporary tariff reductions should include elements such as duration and initiation procedures -- who and when -- for renewal, extension or amendment investigations, as circumstances warrant.)

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) in cases of critical circumstances, within 60 days from the receipt of a properly documented request.

If, as an investigation proceeds, the Tribunal determines that the situation requires the Government's early attention, it should make an interim report.

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 GATT 1994 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 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.