



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Textiles

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## RECOMMENDATION

Request No. TR-2002-010A

Ballin Inc.

(Woven Viscose Rayon Fabrics)

*Recommendation issued  
Tuesday, August 10, 2004*

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Place of Hearing: Ottawa, Ontario  
Date of Hearing: March 24, 2004

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## REPORT TO THE MINISTER OF FINANCE

### INTRODUCTION

1. On February 5, 2004, the Canadian International Trade Tribunal (the Tribunal) received a request from Ballin Inc. (Ballin), of Ville Saint-Laurent, Quebec, for the reconsideration of the Tribunal's recommendation made to the Minister of Finance (the Minister) on January 15, 2004, in Request No. TR-2002-010. The Tribunal had recommended that tariff relief be granted, for an indeterminate period of time, on importations, from all countries, of woven fabrics of viscose rayon staple fibres mixed mainly or solely with polyester filaments, polyester staple fibres and elastomeric monofilaments, dyed or of yarns of different colours, of a weight of 200 g/m<sup>2</sup> or more, with a value for duty of \$10/m<sup>2</sup> or more, indexed annually to compensate for inflation, of subheading No. 5516.22 or 5516.23, for use in the manufacture of trousers, shorts and jackets (the subject fabrics). Ballin made its request for reconsideration because, after the issuance of the Tribunal's recommendation, it reviewed the information that it had submitted to the Tribunal and discovered that it contained errors.

2. In the Tribunal's original investigation, two textile producers, Consoltex Inc. (Consoltex) and Doubletex, opposed the request for tariff relief. Although the Tribunal determined that there were no domestic fabrics identical to or substitutable for the subject fabrics, it was of the view that both Consoltex and Doubletex raised valid concerns about the potential impact on domestic textile producers should tariff relief be recommended, as originally requested by Ballin. In this regard, the Tribunal sought the views of the parties on the following potential, more specific product description:

Woven fabrics of viscose rayon staple fibres mixed mainly or solely with polyester filaments, polyester staple fibres and elastomeric monofilaments, dyed or of yarns of different colours, of a weight of 200 g/m<sup>2</sup> or more, with a value for duty of \$10/m<sup>2</sup> or more, indexed annually to compensate for inflation, of subheading No. 5516.22 or 5516.23, for use in the manufacture of trousers, shorts and jackets.

3. The weight and value-for-duty parameters in this potential description were set at levels that accommodated the samples of the subject fabrics provided by Ballin, with a reasonable margin for fabric variation. Consoltex agreed to this potential product description, whereas Doubletex did not provide any comments. Ballin proposed that the weight parameter be reduced from 200 g/m<sup>2</sup> to 180 g/m<sup>2</sup> in order to accommodate some of its spring fabrics and that the minimum value for duty be established at no more than \$6.50/m<sup>2</sup>, primarily because of the average selling prices of the allegedly substitutable fabrics. However, the Tribunal was of the view that tariff relief should be provided on the basis of the foregoing description, in order to provide some measure of protection against apparel manufacturers obtaining lower-priced offshore textile products that might become available from Canadian textile producers in the future. In addition, in the Tribunal's view, Ballin's proposed change to the weight parameter would have involved a significant change in the coverage of the tariff relief that was requested by Ballin. On the basis of the information provided to the Tribunal, it was estimated that tariff relief would provide yearly benefits of over \$300,000 to users of the subject fabrics.

4. In making its recommendation to the Minister, the Tribunal relied on the volume and value-for-duty data that had been provided by Ballin. Ballin's justification for the request for reconsideration was its discovery of errors contained in its responses to confidential questions 19 and 23 of the requester's questionnaire.<sup>1</sup> In light of its revised information, Ballin submitted that, if a minimum value for duty is to be

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1. In response to question 19, Ballin calculated the square metre cost of the subject fabrics incorrectly. This also led to errors in Ballin's response to question 23 regarding the end product information.

incorporated in the product description, it should be set at no more than \$6.50/m<sup>2</sup>. The minimum value-for-duty threshold requested by Ballin was revised again and submitted as \$6.00/m<sup>2</sup> when Ballin discovered further errors in its information brief of March 1, 2004. The Tribunal also notes that Ballin filed further revisions to the requester's questionnaire after the public hearing.

5. On February 20, 2004, the Tribunal gave notice<sup>2</sup> that it would reconsider its recommendation to the Minister and hold a one-day public hearing in Ottawa, Ontario, on March 24, 2004, to address the following issues:

- the anticipated benefits and costs (i.e. the impact on domestic producers of alleged identical or substitutable fabrics and on users/importers of the subject fabrics in terms of the effect on prices, sales, profitability and employment) of varying the price point set in the original recommendation; and
- the availability of identical or substitutable fabrics.

6. On March 16, 2004, at the Tribunal's request, Ballin submitted supporting documents concerning its actual imports of certain viscose rayon fabrics in 2003 and the first two months of 2004, and updated projections of imports for 2004. Consoltex and Doubletex did not update their responses to the Tribunal's questionnaires or make written submissions concerning this reconsideration.

7. The record of this investigation consisted of all Tribunal exhibits, including the public and protected replies to questionnaires, witness statements and all exhibits filed by the parties throughout the original investigation and the reconsideration of the Tribunal's recommendation,<sup>3</sup> as well as the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

## **REPRESENTATIONS MADE IN REQUEST NO. TR-2002-010A**

### **Ballin**

8. As noted above, Ballin submitted that, in light of the errors made in its submission of data to the Tribunal, if a minimum value-for-duty threshold is to be incorporated into the product description in Request No. TR-2002-010, it should be set at \$6/m<sup>2</sup>. According to Ballin, this would provide a "cushion" against fluctuations in exchange rates.

9. Ballin submitted that, given the Tribunal's finding in Request No. TR-2002-010 that neither Consoltex nor Doubletex produces any fabrics that are substitutable for the subject fabrics, a \$6/m<sup>2</sup> minimum value-for-duty parameter would have no impact on domestic producers. Ballin also submitted that neither company provided any further evidence that would require the Tribunal to reach a different conclusion with respect to the availability of substitutable fabrics.

10. Ballin submitted that, in performing its economic assessments, the Tribunal's terms of reference<sup>4</sup> for investigations into requests from Canadian producers for tariff relief on imported textile inputs provide that a domestic versus foreign price comparison of the relevant textile input is to be based on recent attempts

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2. C. Gaz.2004.I.474.

3. This includes further revisions to the requester's questionnaire that were filed after the public hearing.

4. The terms of reference were last modified on January 13, 2004.

by the applicant to source the specific textile input from domestic and foreign producers. In this regard, Ballin submitted that it has made such recent attempts and has been unable to source a domestically produced substitute for the subject fabrics. Therefore, in the absence of any substitutable domestic fabrics in the range of \$6/m<sup>2</sup> or more, Ballin submitted that the “domestic versus foreign price comparison” prescribed by the terms of reference justifies a minimum value-for-duty parameter of \$6/m<sup>2</sup>. Furthermore, Ballin submitted that the domestic industry has produced no evidence to dispute a \$6/m<sup>2</sup> price threshold.

11. Ballin also submitted that the description of the subject fabrics, as determined in the original recommendation, other than the reference to the value for duty, is reasonable. Ballin submitted that it is not necessary to change the description to protect the domestic industry because the industry does not produce substitutable fabrics and there is no evidence that it will do so in the future.

### **Consoltex**

12. Consoltex, of Ville Saint-Laurent, is a major producer of fabrics of man-made fibres and the largest producer of 100 percent nylon fabrics in Canada. The company is vertically integrated from the weaving to the dyeing, printing, coating and finishing of a fabric, and it employs some 1,000 people in its manufacturing facilities. Consoltex appeared at the hearing under subpoena.

13. Consoltex submitted that, in past recommendations, the Tribunal has indicated that the fashion industry operates on a degree of substitutability that is lower than for other segments of the textile and apparel industries and that, since identical or substitutable fabrics are not produced and sold in Canada, there is no cost to the domestic textile industry. Consoltex submitted that, nonetheless, the Tribunal’s past recommendations have affected it and other domestic producers. Consoltex submitted that, under these circumstances, it attempts to protect its business by narrowing the descriptions of the fabrics under consideration, for example, through the use of a minimum value. Nevertheless, Consoltex submitted that, in the fashion business, a low-priced fabric can be used for a high-end garment if the design and style are acceptable to the customer.

14. Consoltex submitted that it is not possible to reflect the distinguishing features (e.g. hand, drape, finish) in the technical description of the subject fabrics, but that characteristics such as the type of yarn, the decitex of the yarn, the weight of the fabric and its end uses, can be used to narrow the scope of the description. Consoltex submitted that it has the capability to produce fabrics with very fine yarns and that the polyester/rayon/lycra fabrics that it produces are used mainly for ladies’ wear. Consoltex submitted that it also produces some fabrics for use in men’s casual pants and jackets.

### **DECISION**

15. The Minister’s terms of reference direct the Tribunal to assess the economic impact, on domestic textile and downstream producers, of reducing or removing a tariff and, in so doing, to take into account all relevant factors, including the substitutability of an imported fabric for a domestic fabric and the ability of domestic producers to serve the Canadian downstream industries. Consequently, the Tribunal’s decision on whether to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

16. Based on its examination of the record, the Tribunal is of the view that neither Consoltex nor Doubletex produces any fabrics that are substitutable for the subject fabrics and that a \$6/m<sup>2</sup> minimum value-for-duty parameter would unlikely have an economic impact on domestic producers. As noted in the Tribunal’s previous report, although some of Consoltex’s fabrics, i.e. the polyester/rayon/lycra blends, have

a similar technical description to that of the subject fabrics, it is evident that they have not undergone the finishing processes that distinguish the subject fabrics from those of Consoltex. Moreover, the only end product that is currently produced with the subject fabrics and sold by Ballin is men's trousers,<sup>5</sup> whereas Consoltex's polyester /rayon/lycra fabrics are produced mainly for the ladies' wear market,<sup>6</sup> although it is capable of producing fabric for men's casual pants and jackets.<sup>7</sup> In its previous investigation, the Tribunal also concluded that Doubletex had failed to provide convincing evidence to support a conclusion of imminent production or of potential to supply a fabric according to Ballin's requirements and in adequate commercial quantities. The Tribunal notes that Doubletex did not provide additional information concerning the reconsideration of the Tribunal's recommendation to the Minister and did not participate at the hearing.

17. As noted above, Ballin currently uses the subject fabrics to produce men's high-end dress trousers and does not intend to produce men's shorts or women's clothing with the subject fabrics in the near future.<sup>8</sup> Consequently, the Tribunal has information on which to base an estimate of the net economic benefit only with respect to men's dress trousers and not other types of apparel. In this regard, the Tribunal also takes note of Consoltex's concerns with respect to the need to narrow the product description as much as possible. Therefore, the Tribunal is of the view that the end-use provision of the product description should be restricted to men's dress trousers.<sup>9</sup>

18. Based on the new information provided by Ballin, it is the Tribunal's view that tariff relief would provide significant yearly benefits of at least \$50,000 to the apparel industry<sup>10</sup> and, potentially, to consumers. This level of tariff relief would provide benefits to users of the subject fabrics in the form of reduced costs, which could translate into an improvement of their competitive position in the Canadian and U.S. markets, as well as benefits to the consumer in terms of lower prices. As discussed previously, the Tribunal is of the view that there are no domestic fabrics identical to or substitutable for the subject fabrics. Therefore, other than the corresponding duty revenues forgone by the government, the Tribunal does not believe that, with a specified floor price of \$6/m<sup>2</sup>, indexed annually to compensate for inflation, coupled with a narrowing of the end-use provision to men's dress trousers, there are likely to be any direct commercial costs associated with the removal of the customs duty on the importation of the subject fabrics. In summary, the Tribunal finds that the tariff relief would provide net economic gains to Canada.

19. Therefore, on the basis of its examination of all the information and submissions filed with regard to this reconsideration, the Tribunal reaffirms the recommendation for tariff relief that it made in its report to the Minister on January 15, 2004, but recommends that the minimum value for duty be established at \$6/m<sup>2</sup> and that the end-use provision be restricted to men's dress trousers.

## RECOMMENDATION

20. In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted as soon as possible, for an indeterminate period of time, on importations, from all countries, of woven fabrics of viscose rayon staple fibres mixed mainly or solely with polyester filaments, polyester staple fibres and elastomeric monofilaments, dyed or of yarns of different colours, of a weight of 200 g/m<sup>2</sup>

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5. Tribunal Exhibit TR-2002-010A-2D (protected), Administrative Record, Vol. 2 at 9.274.

6. *Transcript of Public Hearing*, 24 March 2004 at 134.

7. *Ibid.* at 134-35.

8. *Ibid.* at 51.

9. With respect to any potential enforcement issues regarding the use of the term "dress", the Tribunal notes that it is used in various tariff items (e.g. tariff item Nos. 5111.11.10, 5111.19.10 and 5111.90.10) in the *Customs Tariff* and that this should assist the Canada Border Services Agency in administering this term in the present case.

10. This includes Peerless Clothing Inc.

or more, with a value for duty of \$/m<sup>2</sup> or more, indexed annually to compensate for inflation, of subheading No. 5516.22 or 5516.23, for use in the manufacture of men's dress trousers.

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Presiding Member

Ellen Fry  
Ellen Fry  
Member

Meriel V. M. Bradford  
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