



**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
BALLIN INC.  
REGARDING  
CERTAIN RAYON-POLYESTER FABRICS**

**MARCH 9, 2001**

**BALLIN INC.**

**REQUEST NO.: TR-2000-004**

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## INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.<sup>1</sup> The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

On December 21, 2000, pursuant to the Minister's reference, the Tribunal received a revised request<sup>2</sup> from Ballin Inc. (Ballin), of Ville Saint-Laurent, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations from all countries of certain rayon-polyester fabrics for use in the manufacture of shorts and trousers. Ballin also sought immediate tariff relief.

On January 3, 2001, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,<sup>3</sup> which was distributed to known interested parties. The fabric under investigation was described in the notice as "woven fabrics of rayon staple fibres other than viscose rayon staple fibres, containing less than 85 percent by weight of rayon staple fibres other than viscose rayon staple fibres, mixed mainly or solely with man-made polyester filaments, of yarns of different colours, measuring 125 decitex or more but not exceeding 280 decitex per single yarn, the staple fibres measuring not more than 3.0 decitex per single staple fibre, weighing 185 g/m<sup>2</sup> or more but not exceeding 230 g/m<sup>2</sup>, of tariff item No. 5516.23.90; and woven fabrics of rayon staple fibres other than viscose rayon staple fibres, mixed mainly with polyester, of yarns of different colours, measuring 105 decitex or more but not exceeding 210 decitex per single yarn, the staple fibres measuring not more than 2.0 decitex per single staple fibre, weighing 190 g/m<sup>2</sup> or more but not exceeding 230 g/m<sup>2</sup>, of tariff item No. 5516.93.90, for use in the manufacture of shorts and trousers (the subject fabrics)".

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. A request for information was also sent to potential importers of the subject fabrics. A letter was sent to the Canada Customs and Revenue Agency (CCRA) requesting a complete description of the physical characteristics of the samples submitted by Ballin, an opinion on whether the tariff relief would be administrable and suggested wording, should tariff relief be recommended. Letters were also sent to a number of other government departments requesting information and advice.

A staff investigation report was not necessary for the purposes of this investigation, since potential producers of fabrics identical to or substitutable for the subject fabrics did not oppose the request.

A public hearing was not held for this investigation.

## PRODUCT INFORMATION

Ballin intends to import the subject fabrics for use in the production of shorts and trousers. Ballin performs all its sewing operations at its facility in Saint-Césaire, Quebec, and its cutting, pressing,

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

2. The original request for tariff relief was received on October 17, 2000.

3. C. Gaz. 2001.I.51.

warehousing and distribution operations in Ville Saint-Laurent. For its U.S. customers, Ballin has a warehousing and distribution centre located in Fairfax, Vermont.

According to Ballin, the high-density weave of the subject fabrics gives them the appearance and feel of fabrics made from natural fibres. Ballin indicated that, when blended with synthetic fibres, such as polyester, the subject fabrics possess superior dimensional stability. Ballin stated that the subject fabrics retain their shape, are easy to care for, and are very durable in terms of both wash and care. Ballin stated that the subject fabrics provide for optimal wearability and comfort, in that they are light and breathable, and allow for high moisture absorption, unlike synthetic fabrics, such as polyester, which do not breathe well and which retain moisture.

As of January 1, 2001, the subject fabrics, classified for customs purposes under tariff item Nos. 5516.23.90 and 5516.93.90 of the schedule to the *Customs Tariff*,<sup>4</sup> are dutiable at 16 percent *ad valorem* under the MFN tariff and are duty-free under the U.S. tariff, the Mexico tariff, the Canada-Israel Agreement tariff and the Chile tariff. The MFN tariff will remain at 16 percent *ad valorem* until December 31, 2002, and then will be reduced to 15 percent *ad valorem* on January 1, 2003, and 14 percent *ad valorem* on January 1, 2004.

## REPRESENTATIONS

### Clothing Industry

Founded in 1946, Ballin manufactures men's trousers and shorts, as well as women's sportswear (jackets, pants, shorts and skirts). The company is privately owned and employs in excess of 700 people. Since the early 1990s, Ballin has established itself as a producer of high-end trousers and shorts with a significant presence in the U.S. market, and it has signed licence agreements to market well-known brands, such as Pierre Cardin, Como (Saks), Van Heusen and Bill Blass.

In its request for tariff relief, Ballin alleged that identical or substitutable fabrics are not available in Canada. Ballin indicated that the composition of the subject fabrics, as well as the finishing process to which they are subjected, distinguishes them from fabrics available domestically. In this regard, Ballin stated that the supplier (Puig Codina of Spain) of sample 5242 markets this fabric as being unique because it is constructed of higher tenacity<sup>5</sup> rayon fibres manufactured by Säteri in Finland. Ballin pointed out that Säteri markets the fibres as being unique due to improvements in the preparation of the cellulose pulp, increased drawing during the spinning process and the use of specific additives, all of which enhance tenacity. Ballin also stated that this fabric can be subjected to a special fibrillation process involving the application of a severe enzyme treatment, dyeing and tumbling. According to Ballin, the enzyme treatment literally eats away at the fibres and causes them to burst into many smaller fibres. The fabric is then dyed and tumbled in an "AIRO" machine in order to open its fibres further. Ballin indicated that this process gives the fabric its "peach skin" hand. Ballin stated that regular rayon-polyester blends have a limiting factor of not being resistant to demanding enzyme, dyeing and tumbling processes. Ballin alleged that no domestic fabrics are manufactured using this unique production process.

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

5. Tenacity is defined as the breaking strength of a yarn or fabric stated in force per unit of cross-sectional area or per unit of linear density.

With respect to samples 5193 and 5196 provided with the request for tariff relief, Ballin indicated that these fabrics are subjected to a unique scouring, dyeing, enzyme and mechanical finishing process that few finishers throughout the world can perform. According to Ballin's supplier, this contributes to the very soft hand of the fabrics. As for sample 5193, a 61 percent Tencel<sup>6</sup> and 39 percent polyester blend, Ballin stated that it has a unique "mini-honeycomb" design, which makes it an excellent fabric for the high-end men's trousers and shorts that it manufactures. Ballin indicated that the Tencel/polyester blend produced by Doubletex, a domestic manufacturer, is not substitutable for this sample. According to Ballin, the Doubletex fabric is lightweight and more suitable for lower-end ladies' wear. Ballin stated that it currently purchases some of Doubletex's cotton/Tencel "Dakota" fabric for some of its men's trousers, but that this fabric is not substitutable for the subject fabrics.

Ballin submitted that the subject fabrics enjoy a certain exclusivity and allure which appeal to retailers of high-quality garments. Ballin indicated that apparel made from the subject fabrics therefore command a higher price in the marketplace. Ballin stated that it intends to sell garments made with the subject fabrics to high-end retailers, such as Saks Fifth Avenue, Nordstroms, Henry Vezina, Holt Renfrew and Neiman Marcus. Ballin also stated that, because of the unique characteristics of the subject fabrics, it intends to use them in the manufacture of high-end golf apparel.

Ballin stated that the fabrics available from domestic producers, such as Consoltex Inc. (Consoltex), do not have the allure or physical characteristics of the subject fabrics and, therefore, are not substitutable for the subject fabrics nor suitable for Ballin's sales to high-end retailers. Ballin stated that domestically produced fabrics may be suitable for pants offered for sale by a low-end retailer, such as Wal-Mart, but that Ballin's clientele demands far more in terms of quality, hand, exclusivity and allure. Ballin indicated that it currently uses 8 to 10 different viscose rayon-polyester fabrics purchased from Consoltex in the manufacture of lower-end ladies' apparel.

As regards price, Ballin stated that the fabrics available from domestic production are less expensive than the subject fabrics. On this issue, Ballin pointed out that the cost to Ballin of the subject fabrics, after duty removal, would still be higher than the cost of fabrics sold by domestic producers. Ballin also pointed out that the ladies' pants that it manufactures with Consoltex's fabrics retail for approximately \$60 to \$70, whereas the trousers made from the subject fabrics will retail for \$165.

Ballin stated that, given the dynamic nature of the textile and apparel industries, it is important for Ballin to acquire specific fabrics that it knows will be marketable in a targeted market niche within a short time frame. Ballin pointed out that its market share in the U.S. market has grown consistently over the past nine years because of the strong demand for high-quality trousers and shorts manufactured from fabrics such as the subject fabrics. In addition, Ballin stated that high-quality trousers and shorts command a higher price in the U.S. market. In this regard, Ballin indicated that a pant manufactured with the subject fabrics that wholesales for approximately \$65 in Canada would sell for approximately \$89<sup>7</sup> in the United States.

Ballin submitted that tariff relief will enable it to sell trousers and shorts manufactured from the subject fabrics at competitive prices in Canada and the United States in order to maintain or increase its market share. Ballin projects that tariff relief will enable it to increase sales of trousers in the 12-month period

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6. Tencel is a trade name for Lyocell, a solvent-spun cellulosic fibre which was developed by Courtaulds, a company based in Axis, Alabama. In April 1996, the U.S. Federal Trade Commission recognized Lyocell as a subclass of rayon (FTC News Release, 12 April 1996).

7. Conversion: US\$1=CAN\$1.56.

ending December 31, 2001, by approximately 80,000 units, which represents \$4.5 million in additional revenues.

Ballin submitted that tariff relief is necessary to overcome the negative effects of the modifications to the duty drawback program that have increased the cost of Ballin's end products and have decreased its competitive edge relative to U.S. manufacturers. It also stated that tariff relief would be of significant benefit to the company when, due to the exhaustion of the Canadian tariff preference levels (TPLs)<sup>8</sup> for cotton and man-made fibre apparel at the end of each year, it must resort to purchasing extra quota<sup>9</sup> from another TPL holder. However, Ballin cannot be assured that it will have the option to purchase extra TPLs in the future and, in this regard, it submitted that tariff relief could offset these costs.

Ballin submitted that tariff relief will not result in any "cost" to the domestic textile industry because the fabrics offered for sale by domestic producers meet the needs of a different, lower-end market niche and are therefore not suitable for Ballin's needs. Ballin submitted that, should tariff relief be granted, it will not be conferred any competitive advantage in the lower-end market niche at the expense of the domestic industry because the subject fabrics will not compete at this level. Finally, Ballin asked for immediate tariff relief.

No other domestic clothing producers filed any submissions.

### **Textile Industry**

Domestic fabric producers did not participate in the investigation.

### **OTHER INFORMATION**

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada maintains quota restraints on polyester filament fabric, including any fabric mixed mainly or solely with polyester filaments (category 35.0), imported from the Republic of Poland, the Republic of Korea and Taiwan. Accordingly, this coverage includes the subject fabrics of tariff item No. 5516.23.90. Bilateral agreements, which provide for these restrictions, between the Government of Canada and the Government of the Republic of Korea and with the Taiwan Textile Federation have been in place since 1978. The bilateral agreement between the Government of Canada and the Government of the Republic of Poland has been in place since 1979.

DFAIT stated that Canada does not maintain quota restraints on the subject fabrics classified under tariff item No. 5516.93.90.

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8. The *North American Free Trade Agreement*—32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA]—provides preferential quotas for apparel and textiles that do not meet the rules of origin. These take the form of TPLs, formerly known as tariff rate quotas under the *Canada-United States Free Trade Agreement*. TPLs permit the importation of a fixed quantity of certain "non-originating" goods into Canada, the United States and Mexico at the NAFTA rate of duty. To qualify for this, manufacturers must have cut (or knitted or shaped) and sewn or otherwise assembled the apparel in Canada. Goods entering a NAFTA country in quantities above the TPLs are subject to the higher MFN rate of duty usually applied to non-NAFTA trading partners. Under NAFTA, however, full duty drawback applies only to Canadian apparel exports to the United States that are traded at full MFN rates of duty (after the TPLs have been fully utilized).
  9. Estimated at \$1.41 per TPL in 1999.

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

The CCRA stated that the samples of the subject fabrics contained either polynosic or Lyocell rayon staple fibres. The CCRA also indicated that there would be no additional costs over and above those incurred by it to administer the tariff relief, should it be granted.

## ANALYSIS

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.

Ballin's request covers certain rayon-polyester fabrics for use in the manufacture of shorts and trousers. The Tribunal notes that this request is somewhat similar to Request No. TR-97-012 filed by Ballin in December 1997 and further amended on February 26 and March 12, 1999. That case covered importations of fabrics made of polyester and polynosic rayon staple fibres, for use in the manufacture of men's shorts and trousers. On October 27, 1999, the Tribunal, being satisfied that there was no Canadian production of identical or substitutable fabrics, recommended to the Minister that tariff relief be granted on importations of these fabrics. The Tribunal notes that Order in Council P.C. 1999-2199<sup>10</sup> dated December 16, 1999, amended the schedule to the *Customs Tariff, inter alia*, by removing the customs duty on the importation of: (1) woven fabrics, of yarns of different colours, of polyester filaments, mixed solely with polynosic rayon staple fibres, the 2-ply warp yarns and the single weft yarns measuring 190 decitex or more but not exceeding 250 decitex per yarn, the staple fibres measuring not more than 2.4 decitex per single staple fibre, of a weight exceeding 170 g/m<sup>2</sup>, of tariff item No. 5407.93.30; and (2) woven fabrics, of yarns of different colours, of polynosic rayon staple fibres, mixed mainly with polyester filaments or polyester staple fibres, measuring 85 decitex or more but not exceeding 250 decitex per yarn, the staple fibres measuring not more than 3.4 decitex per single staple fibre, weighing 120 g/m<sup>2</sup> or more but not exceeding 210 g/m<sup>2</sup>, of tariff item No. 5516.23.20, both for use in the manufacture of men's shorts and trousers.

Ballin claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabrics. This claim was not contested by any domestic fabric producers. Therefore, other than the corresponding duty revenues forgone by the government, the Tribunal does not believe that there will be any direct commercial costs associated with the removal of the customs duty on the importation of the subject fabrics. On the basis of the information available to the Tribunal, tariff relief would result in yearly benefits to Ballin in excess of \$100,000. In addition, tariff relief would provide benefits to users in the form of cost reductions, which could translate into the hiring of new employees, the purchase of new equipment and the provision of further spin-off benefits for local support industries. In summary, the Tribunal finds that the tariff relief requested by Ballin would provide net economic gains to Canada.

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10. *Order Amending the Schedule to the Customs Tariff, 1999-5*, C. Gaz. 2000.II.29.

With respect to Ballin's request that tariff relief be effective "immediately", the Tribunal interprets this request to mean that Ballin would like tariff relief to be effective as of the date of the request. The Tribunal has stated, in previous cases, that it will not consider recommending such relief other than in exceptional circumstances. Ballin has provided no evidence to justify such a request. Therefore, the Tribunal is not persuaded that the current circumstances are so exceptional as to warrant a recommendation for retroactive tariff relief.

## RECOMMENDATION

In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries of woven fabrics of rayon staple fibres other than viscose rayon staple fibres, containing less than 85 percent by weight of rayon staple fibres other than viscose rayon staple fibres, mixed mainly or solely with man-made polyester filaments, of yarns of different colours, measuring 125 decitex or more but not exceeding 280 decitex per single yarn, the staple fibres measuring not more than 3.0 decitex per single staple fibre, weighing 185 g/m<sup>2</sup> or more but not exceeding 230 g/m<sup>2</sup>, of subheading No. 5516.23; and woven fabrics of rayon staple fibres other than viscose rayon staple fibres, mixed mainly with polyester, of yarns of different colours, measuring 105 decitex or more but not exceeding 210 decitex per single yarn, the staple fibres measuring not more than 2.0 decitex per single staple fibre, weighing 190 g/m<sup>2</sup> or more but not exceeding 230 g/m<sup>2</sup>, of subheading No. 5516.93, for use in the manufacture of shorts and trousers.

Zdenek Kvarda

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Presiding Member

Peter F. Thalheimer

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Richard Lafontaine

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Member