

**REPORT TO
MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
ÉQUIPEMENT SAGUENAY (1982) LTÉE
REGARDING
VINEX FR-9B FABRIC**

JUNE 5, 1995

ÉQUIPEMENT SAGUENAY (1982) LTÉE

REQUEST NO.: TR-94-009

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INTRODUCTION

On February 20, 1995, the Canadian International Trade Tribunal (the Tribunal) received a request from Équipement Saguenay (1982) Ltée (Équipement Saguenay) of Chicoutimi, Quebec, for the permanent removal of the customs duty on importations, from Japan and the United States,¹ of VINEX FR-9B fabric (the subject fabric) for use in the production of protective garments.

On March 3, 1995, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation, which was widely distributed and published in Part I of the March 11, 1995, edition of the Canada Gazette.

Équipement Saguenay alleged that the subject fabric is not available from domestic production. The subject fabric is used in the production of protective garments, such as pants, shirts, smocks and overalls.

As part of the investigation, the Tribunal's research staff sent questionnaires to known users of the subject fabric, to users of garments made from that fabric and to potential Canadian producers of fabrics substitutable for the subject fabric.

A staff investigation report, summarizing the information received from the departments that were informed of the investigation, Équipement Saguenay and other firms that responded to the questionnaires, as well as the information contained in a preliminary submission filed by the Canadian Textiles Institute (CTI), was provided to the parties that had filed notices of appearance for this investigation. These parties are: (1) Équipement Saguenay, the requester; (2) the CTI, the industry association; and (3) Lincoln Fabrics Ltd. (Lincoln) of St. Catharines, Ontario, a producer of a fabric that is allegedly substitutable for the subject fabric.

Following the issuance of the staff investigation report, the CTI filed a supplementary submission with the Tribunal, and Équipement Saguenay filed a response. No public hearing was held in connection with this investigation.

PRODUCT INFORMATION

This investigation concerns VINEX FR-9B fabric. This fabric is produced in Japan and distributed in North America by Westex Inc. of Chicago, Illinois. Therefore, it is dutiable under the MFN tariff when imported into Canada.

The subject fabric is classified for customs purposes under tariff item No. 5512.99.00.90 of Schedule I to the *Customs Tariff*.² It is dutiable at 20.5 percent ad valorem under the MFN tariff.

1. Équipement Saguenay referred to the United States in its request, but the investigation revealed that the subject fabric is not produced in that country; rather, it originates in Japan.

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

The subject fabric is used by Équipement Saguenay to produce protective garments, such as pants, shirts, smocks and overalls. The fabric is cut from a pattern and sewn to customer specifications by a team of seamstresses. The subject fabric provides flame retardancy, thermal insulation and non-thermally melting properties to the protective garments.

There are only a few users of the subject fabric in Canada. The subject fabric is used in the production of garments that are worn in aluminum plants, where it provides good resistance to molten aluminum. Only two importers of the subject fabric were identified, Équipement Saguenay and J.B. Goodhue (1993) Inc. (Goodhue) of Bromptonville, Quebec. Canadian production of garments made from the subject fabric accounts for 32 percent of Équipement Saguenay's sales and between 10 and 20 percent of Goodhue's sales.

Garments made from the subject fabric are used at the casting area³ in aluminum plants, where workers are exposed to splashes of molten metal. Molten aluminum neither penetrates nor sticks to the subject fabric. Other fabrics used in the production of protective garments, such as Nomex, Kermel and other fire-retardant fabrics made with aramid fibres, are not suitable at the casting area, as the metal sticks to these fabrics and burns them.

However, the subject fabric is less effective at the electrolytic bath area because the temperature required there to separate the various metal alloys is much higher than the temperature required for casting. At that area, garments made from other fabrics, such as melton or wool twill, are preferred. These fabrics are produced in Canada by Cleyn & Tinker of Montréal, Quebec. This Canadian producer did not oppose Équipement Saguenay's request and did not respond to the Tribunal's questionnaire.

The total estimated volume of Canadian imports of the subject fabric for 1994 was between 25,000 and 35,000 linear metres, representing a total value for duty of approximately \$450,000 to \$550,000. These imports are expected to increase by 10 to 20 percent in 1995 as compared to 1994. The total customs duties payable on the proposed imports would be between \$110,000 and \$130,000.

The apparent market for garments made from the subject fabric in 1994 was between \$600,000 and \$800,000. It is currently shared between Équipement Saguenay and Goodhue. Acklands Limited - Safety Supply (Acklands) of Saint-Laurent, Quebec, which distributes health and safety equipment, responded to two calls for tenders in 1994 for the supply of garments made from the subject fabric. However, the contracts were awarded to competitors.

3. The production process used in an aluminum plant entails the electrolyte reduction of aluminum using a high-temperature (approximately 950°C) solution (bath) of cryolite and alumina. Afterwards, the metal extracted from the reduction cells is transferred to holding furnaces, cooled to approximately 700°C and cast into ingots in water-cooled casting pits, usually referred to as casting.

OBSERVATIONS

The two users of the subject fabric, Équipement Saguenay and Goodhue, requested that the customs duty be removed. They maintained that there is no substitute product for the subject fabric with respect to certain applications in aluminum plants. Acklands supports the request on the condition that it will also be able to benefit from the tariff relief.

The users of garments made from the subject fabric that responded to the Tribunal's questionnaire all supported Équipement Saguenay's request. These users are: (1) Canadian Reynolds Metals Company Limited (Reynolds) of Baie-Comeau, Quebec; (2) Aluminerie de Bécancour Inc. (Bécancour) of Bécancour, Quebec; and (3) Aluminerie Luralco Inc. (Luralco) of Deschambault, Quebec.

Reynolds supports the request for tariff relief, as the subject fabric may be used to make the flame-retardant garments that are essential to its production, a factor that should be reflected in its purchase price. According to Reynolds' experience and the information provided by its suppliers, no fabric identical to or substitutable for the subject fabric exists in Canada. The company is currently trying to obtain substitutable fabrics. Reynolds is testing one of these products (Nomex) and expects the results of its tests to be available by the end of 1995.

Bécancour informed the Tribunal that it had replaced the subject fabric by a wool twill because it was easier to obtain and provided better protection. Its supplier of protective garments is Acklands, which obtains the fabric from Cleyn & Tinker.

Luralco provided information which confirms the use of the subject fabric in its plant. At the electrolytic bath area, it uses garments made from Zirpro-treated wool twill and, at the casting area, it uses garments made from the subject fabric.

Some Canadian producers are opposed to the tariff relief requested for the subject fabric. They claim that some of their products have the same technical characteristics as those of the subject fabric and are, therefore, substitutable for the subject fabric. These producers are: (1) Barrday, Inc. (Barrday) of Cambridge, Ontario; (2) Lincoln; (3) Consoltex Inc. (Consoltex) of Montréal, Quebec; and (4) Dominion Industrial Fabrics Company (Dominion) of Montréal, Quebec.

Barrday claims that the S2232 fabric that it produces is superior to the subject fabric. The S2232 fabric, which has a fibre content of 65 percent PFR rayon and 35 percent aramid fibres, is more hard-wearing and less subject to shrinkage than the subject fabric. Furthermore, the S2232 fabric is heat-resistant up to a temperature of 450°F, whereas the subject fabric, according to Barrday, is heat-resistant only up to a temperature of 300°F. Finally, the price of the S2232 fabric is lower than the price of the subject fabric.

Lincoln claims that the 406T fabric that it produces is superior to the subject fabric in tensile strength, tear strength and flame retardancy. The selling price of this fabric, which has a fibre content of

65 percent rayon and 35 percent “Conex Teijin” fibres, is only slightly higher than the delivered purchase price of the subject fabric.

Consoltex contends that it produces fabrics substitutable for the subject fabric made from aramid fibres, brand name fabrics such as Nomex, Kevlar, Kermel and Conex,⁴ and fabrics made from aramid and FR rayon fibres. These fabrics are used in a number of sectors where worker safety is vital, including firefighting (firefighters), refineries, forestry, public utilities (electricity), the chemical industry, ballistics, etc. The delivered selling price of these fabrics is slightly lower than that of the subject fabric.

Dominion contends that some of the fabrics that it produces are superior to the subject fabric. Fire-retardant fabrics produced by the company include fabrics with a fibre content of 100 percent aramid fibres. The fabrics made of 100 percent aramid fibres are usually more expensive than fabrics made of a mixture of aramid and other fibres. However, the fabrics made of 100 percent aramid fibres are more durable.

The Department of Industry claimed that a number of Canadian companies produce fabrics that provide flame retardancy, thermal insulation and non-thermally melting properties equal or superior to the subject fabric. According to the Department of Industry, these Canadian companies are specialists in the field of fire-retardant fabrics and have developed their domestic and foreign markets. They are constantly developing new high-performance products in order to remain on the leading edge of technology in the field of fire-retardant fabrics and protective garments.

The Department of Foreign Affairs and International Trade informed the Tribunal that the subject fabric is not subject to quantitative import restrictions. However, fabrics imported under the tariff item applicable to the subject fabric, that is, tariff item No. 5512.99.00.90, are contemplated in the Import Control List. As such, importers that want to import fabrics that are classified under this tariff item must obtain an import licence. In 1994, Canadian imports of the subject fabric totalled only 97,345 kilograms, representing a total value for duty of approximately 1.3 million dollars.

According to the Department of National Revenue, there will not be any costs, over and above those already incurred by it, to administer the tariff relief should it be granted.

The CTI is opposed to Équipement Saguenay’s request that the subject fabric enter duty-free because fabrics substitutable for the subject fabric are produced in Canada. According to the CTI, the removal of the customs duty on imports of the subject fabric would have a negative impact on the production, sales, prices and profits of Canadian producers of fabrics substitutable for the subject fabric. Furthermore, there would be a similar impact on sales of yarn by Canadian producers. The CTI also fears that the duty-free entry of the subject fabric would encourage potential buyers to purchase the subject fabric

4. These trademarks belong to foreign companies. Nomex and Kevlar belong to a U.S. company, DuPont, of Nemours; Kermel belongs to a French company, Rhône-Poulenc; and Conex belongs to a Japanese company, Teijin.

rather than domestic fabrics for protective garment end uses other than those for which the subject fabric would be suitable.

Following the issuance of the staff investigation report, the CTI filed a supplementary submission, in which it maintained that the evidence on record clearly shows that the Canadian Zirpro-treated 100 percent wool twill competes with the subject fabric and is superior to it. The evidence also shows that fabrics made of 100 percent aramid fibres or blends of aramid fibres for use in protective garments are produced in Canada. The CTI also noted that the staff investigation report focused on the use of protective garments at the casting area in aluminum plants and that it would be impossible for the Department of National Revenue to apply a tariff item only for protective garments that are worn at the casting area in aluminum plants. Furthermore, the CTI does not accept the argument that the four Canadian producers that it represents would not incur any costs if the tariff relief were granted. It contends that removing the tariff would grant a price advantage to the imported product comparable to a margin of dumping or an amount of subsidy likely to cause injury to Canadian producers. This price advantage would correspond to a margin of dumping of 17 percent $[1-(100/120.5)]$. The CTI also claims that the cost of removing the tariff must also include lost sales of Canadian fabrics to aluminum plants, such as Cleyn and Tinker's product, that would be incurred by the domestic textile industry. According to the CTI, the loss of tariff revenues and the loss of opportunity to displace the imports are also costs.

The CTI also asks whether it is fair, in terms of tariff policy, to create a special status for the subject fabric by making it duty-free because, at a given point in time, it is preferred for a specific application, to solve the financial difficulties of a requester by creating a tariff advantage or to remove a tariff when exchange rates favour Canadian producers.

In its response to the supplementary submission filed by the CTI, Équipement Saguenay provided a copy of the results of the laboratory tests carried out by Alcan International Limited (Alcan) of Jonquière, Quebec, in May 1986. According to Équipement Saguenay, these tests show that the subject fabric performed better than any other fabric and that no fabric is substitutable for it. Alcan's evaluation report concludes that [translation] "VINEX fabric presents good thermal performance. It does not burn when exposed to fire, and metal and the bath flow easily on the fabric. The fabric is not penetrated by reasonable quantities of both the bath or liquid metal."⁵

Équipement Saguenay maintains that its financial position is very sound. The progress in the area of safety (that is, the production of garments made from the subject fabric) has been gradual, on the basis of medium-term investments, which would indicate the possibility of some losses during the development of this production. It has now become profitable, the basic investments having been made, and it must now obtain the tariff relief requested in order to continue with this line of production. Équipement Saguenay also notes that the company operates in a remote area where the economic situation is difficult from both a business and an employment point of view. According to the company, it would be unfortunate if it had to eliminate six to eight permanent jobs because of a refusal to grant the tariff relief.

5. Paul Desclaux, Évaluation de la protection thermique du tissu VINEX, 1986.

ANALYSIS

Based on previous import levels for the subject fabric and projections provided by the two Canadian importers of the subject fabric, the main direct advantage of the tariff relief would be approximately \$115,000 to \$130,000 per year, that is, the amount of uncollected duties on annual imports of the subject fabric. The tariff relief would give Équipement Saguenay alone an advantage of approximately \$66,000 per year, which would be sufficient to compensate for the gross deficit margin of \$50,000 recorded by the company in 1994 for sales of garments made from the subject fabric.

Canadian producers that claim to produce fabrics that are substitutable for the subject fabric, as well as the CTI, feel that such tariff relief would have a negative impact on the industry. In fact, the costs estimated and provided by Dominion alone concerning the impact of the tariff relief on its activities would greatly exceed the direct advantage which the two importers of the subject fabric would enjoy. Dominion estimates that it would record lost profits of over two million dollars. On the other hand, Barrday indicated that the tariff relief would translate into a reduction in sales volume and lost profits of 10 percent respectively and a 10 percent reduction in the number of jobs. Furthermore, Consoltex indicated that it would experience a loss of market share, price suppression, an erosion of the profit margin and a loss of customers. Finally, Lincoln mentioned that there would be a salary reduction corresponding to over \$1,000/1,000 metres of fabric.

The Tribunal does not doubt that certain fire-retardant fabrics produced in Canada by Consoltex, Barrday, Dominion and Lincoln perform better than the subject fabric in some applications, such as firefighting, or in industrial sectors, such as refineries, forestry and the chemical industry. This can be attributed to the fact that these fabrics are more flame-retardant than the subject fabric. According to one of Alcan's tests, the subject fabric shrinks considerably when it is exposed to fire. Moreover, the evidence provided by the Canadian producers confirms that the subject fabric is inferior to certain of these producers' fabrics in terms of flame retardancy and shrinkage. Finally, the Tribunal notes that the subject fabric is used only in aluminum plants and not in these other industrial sectors.

However, the evidence clearly shows that the subject fabric resists splashes of liquid aluminum better than the fire-retardant fabrics mentioned above. According to Acklands' representative, imported or Canadian fabrics that are fire-retardant have been developed for their flame retardancy and have thus been tested for fire resistance. These producers have not tested them against splashes of liquid aluminum. According to the aluminum plants that tested against splashes of molten aluminum, there are only three products that do not burn: fabrics made from melton, Cleyn & Tinker's wool twill and those made from the subject fabric. Molten aluminum does not stick to these fabrics and, consequently, does not burn them. In a letter submitted to the Tribunal by Équipement Saguenay, Alcan mentions that, after having carried out laboratory tests on different fabrics in 1985, the subject fabric performed the best. Alcan also notes that the situation was critical at that time since many of its employees were suffering burns.

Lauralco benchmarked many fabrics known for their flame retardancy. After carrying out tests with splashes of electrolytic solution and liquid aluminum at its aluminum plant and of molten iron at its foundry,

Lauralco decided to use the Zirpro-treated wool twill produced by Cleyn & Tinker and the subject fabric. With regard to the electrolytic solution and molten iron, the fabric that performed the best and that was the safest was the Zirpro-treated wool twill. With regard to the molten aluminum, although the Zirpro-treated wool twill proved to be somewhat superior, priority was given to worker comfort, since wool irritates the skin. The other aluminum plants also use the subject fabric at the casting area. Only Bécancour has replaced the subject fabric at the casting area, because it has recently had difficulty obtaining garments made from the subject fabric. Its supplier, Acklands, sells it garments made from wool twill which Acklands and Cleyn & Tinker developed jointly.

The Tribunal finds that aluminum plants have a clear preference for garments made from the subject fabric at the casting area, since they provide good protection against splashes of liquid aluminum and are more comfortable than garments made from melton or Zirpro-treated wool twill. The price of the various fabrics or garments made from these fabrics does not appear to be the most important factor in the purchasing decisions of aluminum plants. Rather, safety is the most important factor. Although the fire-retardant fabrics made by Canadian producers are generally available at prices that are lower than the delivered cost of the subject fabric, the aluminum plants do not seem to purchase garments made from these fabrics. According to Lauralco, these fabrics are found in its plant in manufactured goods, but not in protective garments.

The Tribunal is not convinced that, if the tariff relief were granted, the Canadian textile industry will lose sales of its fire-retardant fabrics or that Cleyn & Tinker's sales of wool twill will decrease in favour of the subject fabric. The subject fabric, the wool twill and the other fire-retardant fabrics produced by the four Canadian producers represented by the CTI have specific applications. Consequently, the Tribunal finds that there is no Canadian fabric that is really substitutable for the subject fabric and, therefore, is of the opinion that the request for tariff relief submitted by Équipement Saguenay is justified.

Moreover, the Tribunal finds that the tariff relief will help Équipement Saguenay maintain its competitive position in relation to any potential U.S. garment manufacturers that could supply Canadian aluminum plants with protective garments made from the subject fabric. Finally, since the Canadian producers will not incur any costs because they do not produce any really substitutable fabrics and since Équipement Saguenay will be able to improve its financial situation and thus maintain or create other jobs in the production of garments made from the subject fabric, the Tribunal finds that the Canadian economy will benefit if such tariff relief is granted.

However, the Tribunal notes that many Canadian producers are specialists in the area of fire-retardant fabrics and protective garments and that these producers are continuing to develop new high-performance products in this area. For example, Reynolds is currently attempting to obtain fabrics that are substitutable for the subject fabric, such as Nomex. The company will be unable to reach any conclusions from its tests until the end of 1995. If the Canadian producers succeed in developing a product that is really substitutable for the subject fabric and if they request the commencement of an investigation under subsection 18(1) of the Tribunal's Textile Reference Guidelines, the Tribunal will be able to commence such an investigation. However, in order to ensure a degree of financial stability for Équipement Saguenay or any

other garment manufacturers who want to use the subject fabric, the Tribunal recommends that the tariff relief be granted for a three-year period.

RECOMMENDATION

In light of the foregoing and the evidence on record, the Tribunal hereby recommends that the Minister of Finance remove, for a three-year period, the customs duty on importations of the subject fabric for use in the production of protective garments worn in aluminum plants.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

DISSENTING OPINION (MEMBER RUSSELL)

I would have recommended against the duty-free entry of the subject fabric on the grounds that a Canadian-made substitute appears to be available from Cleyn & Tinker and that there is no evidence that failure to remove the customs duty currently payable will lead to Équipement Saguenay's production of protective garments for Alcan being displaced by imports of similar garments made from the subject fabric.

My colleagues' conclusion that no Canadian-made fabric is "really substitutable" for the subject fabric appears to be based on evidence that two or three aluminum plants prefer it to other fabrics for the protection of workers handling molten metal at the casting area. There is, however, ample evidence that Cleyn & Tinker's Zirpro-treated wool twill is substitutable for the subject fabric in this end use. Bécancour has recently switched from the subject fabric to Zirpro-treated wool twill; Lauralco found the performance of the two fabrics at the casting area to be very similar, choosing the subject fabric because it is more comfortable to wear, but acknowledging that the wool twill offered slightly better protection to workers; and Acklands, a major Canadian safety supply house and competitor of Équipement Saguenay that offers protective garments made from both fabrics, stated in its submission that it considers them substitutable.

As to the significance of price, and hence of tariff relief, in decisions about what kind of fabric will be used for protective garments, I agree with my colleagues that the worker's safety is more important than the cost of the fabric or garment. However, both Alcan and Reynolds state that "price" is one of four factors which they take into account in deciding where to source their protective garments. Équipement Saguenay also cites the impact of the customs duty on its costs as an important factor in its ability to continue producing protective garments made from the subject fabric.

All successful commercial enterprises must constantly seek ways to contain or reduce costs. For this reason, I believe that the extent to which substitution will occur between two products which perform similarly in a particular end use will depend importantly on their relative prices. Since the assessment of a customs duty raises the price of an imported product and improves the competitive position of like or similar goods produced in Canada, it follows that its removal will affect relative prices and could well lead to the imported product being substituted for the domestic one on the basis of price alone. There might be some lag between the tariff change and changes in sources of supply because of lead times required to bring on new supplies, but it would be wrong to assume that a change in relative prices in the order of 17 percent would have no impact on sourcing decisions in the medium to long term.

To be meaningful, any "cost/benefit" analysis of tariff removal must take into account these and other dynamics of the market, rather than concentrate on short-term gains and losses. The information currently before the Tribunal does not permit such an analysis in this case, in part because no submission was received from Cleyn & Tinker within the time allowed for comment on the request and in part because the guidelines adopted for the textile reference (after consultation with the industry associations), or at least the way in which they have been applied in this case, have resulted in an investigation which, in my view, is excessively narrow in scope.

Without knowing more about the economics of the flame-retardant fabric industry as a whole, it is impossible to judge what level of tariff protection is appropriate or to measure the costs of removing the customs duty on the subject fabric. I believe, however, that the potential costs include an adverse impact on Cleyn & Tinker's current production and, as suggested in the submissions of the Department of Industry and the CTI, at least a chilling effect on the four other Canadian producers of flame-retardant fabrics that participated in the investigation, in regard to their efforts to develop new products and new markets for their current products.

With regard to the benefits of removing the customs duty on the subject fabric, it is far from clear what part of the savings would accrue to Équipement Saguenay. In its submission in support of the request, Reynolds states that it would expect any tariff relief on the subject fabric to be reflected in the price at which it purchases protective garments from its supplier, Guillevin International Inc. I would expect no less of Alcan. Given recent increases in the value of both the U.S. dollar and the Japanese yen in relation to the Canadian dollar, it is very likely that the U.S. distributor and the Japanese producer of the subject fabric will, over time, capture part of the benefit of any tariff relief. What portion finds its way abroad will depend importantly on the degree of substitutability between the subject fabric and other fabrics. If there are no close

substitutes, as found by my colleagues, I would not expect very much of the benefit to accrue to Équipement Saguenay.

In its initial submission, Équipement Saguenay mentioned the possibility of Alcan importing finished garments from the United States if Équipement Saguenay were to cease production because of rising costs, lack of tariff relief and continued resistance by Alcan to a price increase. No evidence has been submitted on this issue, but it must be assumed that, given its position that the subject fabric is the only fabric suitable for use at the casting area, Alcan would be importing garments sewn up in the United States from fabric of Japanese origin. Under the rules of origin under the *Canada-United States Free Trade Agreement* and the *North American Free Trade Agreement*, these goods would attract the MFN tariff of 24.3 percent. It is difficult to understand how a U.S. supplier could successfully compete for Alcan's business on this basis, especially since the cost of the fabric is a large percentage of total cost of production. My colleagues do not address this issue, but seem to accept at face value Équipement Saguenay's allegation that it needs tariff relief to continue producing garments made from the subject fabric. I would want to know more about other possible opportunities for reducing costs and about the extent to which foreign-made finished goods are a real threat.

Lyle M. Russell

Lyle M. Russell
Member