CANADIAN INTERNATIONAL TRADE TRIBUNAL

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

REPORT TO THE MINISTER OF FINANCE

REQUESTS FOR TARIFF RELIEF BY BECO INDUSTRIES LTD. REGARDING CERTAIN PRINTED WOVEN FABRICS OF COTTON OR BLENDS THEREOF WITH POLYESTER FIBRES

JULY 4, 1996

REQUEST NOS.: TR-95-035, TR-95-043 AND TR-95-044

BECO INDUSTRIES LTD.

Request Nos.: TR-95-035, TR-95-043 and TR-95-044

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INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference[1] from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.[2] 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.

Pursuant to the Minister's reference, on July 14 and August 16, 1995, the Tribunal received three requests from Beco Industries Ltd. (Beco) of Ville D'Anjou, Quebec, for the permanent removal of the customs duty on importations of:

(1) woven fabric, containing at least 70 percent but less than 85 percent by weight of cotton, mixed with polyester fibres, printed, measuring less than 250 decitex per single yarn, of widths ranging from 170 to 240 cm, of weights ranging from 90 to 110 g/m^2, for use in the manufacture of comforters, pillow cases, pillow shams, dust ruffles, draperies, valances, table rounds and duvet covers (the subject cotton/polyester fabric) (Request No. TR-95-035); and

(2) woven fabric, solely of cotton, printed, measuring less than 300 decitex per single yarn, of widths ranging from 170 to 240 cm, of weights ranging from 85 to 110 g/m^2, for use in the manufacture of comforters (the subject cotton fabric) (Request Nos. TR-95-043 and TR-95-044).

In its requests, Beco alleges that the subject fabrics are not available from domestic production. With respect to the subject cotton/polyester fabric, Beco alleges that known Canadian producers of cotton/polyester fabrics either cannot produce identical or substitutable fabrics in the widths required or use the fabrics for their own internal production of finished products and do not sell them to other competing manufacturers, such as Beco. With regard to the subject cotton fabric, Beco claims that it is so inexpensive that Canadian producers do not attempt to produce identical or substitutable fabrics, as they cannot be produced profitably.

On November 16, 1995, at the Tribunal's request, Beco provided additional information to clarify and complete its requests for tariff relief. Following receipt of this information, the Tribunal was satisfied that the requests were properly documented and decided to join the three requests into one investigation. On December 13, 1995, the Tribunal issued a notice of commencement of investigation, which was distributed and published in the December 23, 1995, edition of the Canada Gazette, Part I.[3]

As part of the investigation, the Tribunal's research staff sent questionnaires to potential domestic producers of identical or substitutable fabrics. Questionnaires were also sent to known importers and users of fabrics identical to or substitutable for the subject fabrics. Letters were sent to the Department of National

1. On March 20, 1996, the Minister of Finance revised the terms of reference.
2. R.S.C. 1985, c. 47 (4th Supp.).
3. Vol. 129, No. 51 at 4309.

Revenue (Revenue Canada) requesting information on the tariff classification of the subject fabrics. Samples were provided for laboratory analysis. Letters were also sent to a number of other government departments requesting information and advice.

On February 9, 1996, a staff investigation report, summarizing the information received from these departments, Beco and other firms that responded to the questionnaires, was provided to the parties that had filed notices of appearance for this investigation. These parties are: Beco, C.S. Brooks Canada Inc. (C.S. Brooks), Wink Industries Ltd. (Wink), Simplex Textiles (Canada) Inc. (Simplex), Doubletex Inc. (Doubletex) and the Canadian Textiles Institute (CTI).

Following distribution of the staff investigation report, C.S. Brooks, Wink and Doubletex filed submissions with the Tribunal. The CTI also filed a submission; however, as it was received after the receipt of Beco's final response, the submission was not put on the record of the investigation. Beco responded to the various submissions. Due to the large volume of conflicting evidence concerning the substitutability of domestic fabrics for the subject fabrics and the competitiveness of the finished products made from those fabrics, the Tribunal agreed to hold a public hearing at C.S. Brooks' request. The issues at the hearing were limited to:

- the substitutability of fabrics made by Canadian producers for those imported by Beco and the substitutability between cotton fabrics and blended cotton/polyester fabrics;
- the market competition between Beco's finished products and the finished products produced by other Canadian manufacturers; and
- the effect of new rules of origin regulations on exports of finished products made from the subject fabrics to the United States.

PRODUCT INFORMATION

The sample of the subject cotton/polyester fabric analyzed by Revenue Canada is woven from single yarns of cotton fibres in the warp and from blended single yarns of cotton and polyester fibres in the weft. The cotton fibres represent 82 percent of the sample weight and the polyester fibres represent 18 percent of the sample weight. The warp yarns measure 196 decitex per single yarn and the weft yarns measure 191 decitex per single yarn. In the warp, there are 330 yarns per 10 cm and, in the weft, there are 205 yarns per 10 cm. The fabric weighs 105 g/m^2.

Beco submitted that an acceptable substitutable fabric would need to contain at least 70 percent, but less than 85 percent, by weight of cotton mixed with polyester fibres, be printed, measure less than 250 decitex per single yarn, be at least 170 cm wide but not more than 240 cm wide and weigh at least 90 g/m^2 but not more than 110 g/m^2.

The subject cotton/polyester fabric is classified for customs purposes under classification No. 5210.51.00.00 of Schedule I to the *Customs Tariff*.[4]

This classification covers a broad range of fabrics: plain weave, printed fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/m^2. As of January 1, 1996, the subject cotton/polyester fabric is dutiable at 19.0 percent *ad valorem* under the MFN tariff and the GPT; at 20.2 percent *ad valorem* under the BPT; at 14.2 percent *ad valorem* under the Australia and New Zealand tariffs; at 5.0 percent *ad valorem* under the U.S. tariff; and at 17.5 percent *ad valorem* under the Mexico tariff.

The two samples of the subject cotton fabric are printed 100 percent cotton fabrics. Depending on their weight, they can be classified under one of two classification numbers. They are woven from yarns of cotton fibres in both the warp and the weft.

As for the lighter sample of the subject cotton fabric analyzed by Revenue Canada, in one direction, the yarns measure 223 decitex per single yarn and, in the other direction, the yarns measure 253 decitex per single yarn. In one direction, there are 209 yarns per 10 cm and, in the other direction, there are 179 yarns per 10 cm. The fabric weighs 98 g/m^2.

As for the heavier sample of the subject cotton fabric analyzed by Revenue Canada, in one direction, the yarns measure 227 decitex per single yarn and, in the other direction, the yarns measure 247 decitex per single yarn. In one direction, there are 209 yarns per 10 cm and, in the other direction, there are 199 yarns per 10 cm. The fabric weighs 101 g/m^2.

Beco submitted that an acceptable substitutable fabric would need to contain 100 percent cotton fibres, measure less than 300 decitex per single yarn, be at least 170 cm wide but not more than 240 cm wide and weigh at least 85 g/m^2 but not more than 110 g/m^2.

The subject cotton fabric is classified under classification No. 5208.51.00.00 (100 g/m^2 or less) or 5208.52.90.90 (over 100 g/m^2).

These two classifications cover a broad range of fabrics: plain weave, printed fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m^2. As of January 1, 1996, the subject cotton fabric is dutiable at 16.0 percent *ad valorem* under the MFN tariff and the GPT; at 15.7 percent *ad valorem* under the BPT; at 3.4 percent *ad valorem* under the U.S. tariff; and at 12.2 percent *ad valorem* under the Mexico tariff.

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

REPRESENTATIONS

Users of the Subject Fabrics

Beco manufactures home furnishings in its plant. Its principal products are adult bedding products and related products, such as comforters, comforter sets, pillow shams, dust ruffles, duvet covers, decorative pillows and complete bed ensembles. Beco also produces a line of infant bedding products, draperies, valances, table rounds, sleeping bags, lawn furniture, replacement pads, umbrellas and ironing board covers.

The subject cotton/polyester fabric

Beco submitted that its request for tariff relief was intended solely to return it to the position in which it was prior to the restriction on duty drawbacks under the *North American Free Tree Agreement*[5] (NAFTA). It claimed that, in a number of instances, the federal government had reduced or eliminated import tariffs for other industries in the same situation, such as the auto parts industry.

Beco argued that the production of adult bedding products using the subject cotton/polyester fabric accounts for a large percentage of its total plant output, that most of this production is exported to the United States, that the majority of its employees are devoted to this product line and that its ability to compete in the U.S. market is, therefore, very important to its business. Beco further argued that its exports will cease to be competitive in the U.S. market as a result of the new duty drawback provisions[6] of NAFTA that took effect on January 1, 1996, and which severely curtailed its ability to claim full duty drawbacks in respect of a number of its end products.

Beco claimed that Canadian producers of cotton-rich[7] cotton/polyester fabrics manufacture them solely for their own use. C.S. Brooks and Wink, which can produce these fabrics, are keen competitors of Beco in the end-use market. Beco further claimed that Wink would have to change its entire production to an 80/20 cotton/polyester blend in order to supply Beco, which would not be practical, and that C.S. Brooks had not, in the past, been a supplier to manufacturers. According to Beco, Consoltex Inc. (Consoltex) produces a cotton/polyester fabric, but only in a 60-in. width, while for Beco's production of comforters, the width, which is related to the size of beds, must be at least 90 in. but not more than 94 in. For other products, Beco requires widths of at least 66 in. Finally, Beco claimed that Doubletex does not produce

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5. Done at Ottawa, Ontario, December 11 and 17, 1992, at Mexico, D.F., on December 14 and 17, 1992, and at Washington, D.C., on December 8 and 17, 1992 (in force for Canada on January 1, 1994).
6. For Canada-U.S. trade, a "duty refund system" replaced the Duty Drawback Program on January 1, 1996. The refund is equivalent to the lesser of: (a) the duty paid on the non-NAFTA textile input imported to make the fabric; or (b) the duty paid on the fabric when exported to the United States. The duty refund system will be phased out at the same pace as the NAFTA tariff-free access is phased in. When the tariff is completely removed, the duty refund system will no longer exist. For apparel exports to non-NAFTA countries, duty drawbacks will continue to apply indefinitely.
7. Means a product containing at least 51 percent cotton by weight.

fabrics and does not have the capability to produce a printed fabric, which means that, in order to use Doubletex's products, Beco would have to change its operations totally.

Beco submitted that, while consumers in Canada may not consider a particular blend of cotton/polyester to be an important consideration in their purchase decisions, it has identified and fulfilled a market niche in the United States for cotton-rich cotton/polyester comforters. Consequently, Beco alleges that its sales depend upon having access to affordable cotton-rich fabrics. As these fabrics are not used to manufacture products for the Canadian market, Beco further alleges that its end products will not compete with products made by C.S. Brooks and Wink. Beco also pointed out that cotton-rich comforters enter the United States at a significantly reduced tariff rate.

To ensure that the subject fabrics are not used to produce goods for sale in the Canadian market, Beco suggested that tariff relief be limited exclusively to its imports of the subject fabrics. Finally, Beco submitted that the tariff need not be completely removed. Instead, it requested that the tariff be reduced to a level that would put it in the same cost position in which it was prior to the elimination of the Duty Drawback Program.

The subject cotton fabric

Beco argued that it uses the subject cotton fabric to manufacture its promotional line of comforters, which accounts for a large proportion of its plant output. Beco further argued that, in the last three years, it had invested a significant amount of money in specialized equipment to automate this production line, enabling it to become Canada's largest manufacturer of comforters.

Beco claimed that there are no domestic producers of identical or substitutable fabrics. Because the subject cotton fabric is so inexpensive, Canadian producers do not attempt to make identical or substitutable fabrics, as they cannot produce them profitably at these low price levels. Beco noted that the fabrics claimed by domestic producers to be substitutable were all cotton/polyester blends.

Beco submitted that the promotional or budget comforters are opening price point products which are not manufactured by any other Canadian producer and which do not compete with comforters in other market segments. Further, Beco argued that it would be inappropriate to use the subject cotton fabric to produce comforters in the other market segments.

Finally, Beco submitted that tariff relief could be limited to the subject cotton fabric used in the production of budget comforters (or opening price point budget comforters), thus ensuring that tariff relief would not cause increased competitive pressures on the comforter lines produced by other Canadian manufacturers that use domestically produced or converted fabrics.

GIII Ltd., located in Winnipeg, Manitoba, is a manufacturer of comforters and other home furnishings. It purchases the subject fabrics from importers. GIII Ltd. claimed that the subject fabrics were not available from Canadian production and that tariff relief would allow it to be more competitive in the U.S. market.

Lenrod Industries Ltd. (Lenrod), located in Ville Saint-Laurent, Quebec, is a converter and distributor of synthetic woven and non-woven fabrics serving the furniture, bedding and apparel industries. It imports the subject cotton/polyester fabric and is currently supplying Beco and others in the home furnishing industry.

Besides supporting Beco's requests for tariff relief, Lenrod believes that tariff relief should be granted on cotton/polyester fabrics under 170 g/m^2, currently classified under classification Nos. 5513.21.00.20-Dyed, 5513.41.00.20-Printed and 5513.11.00.22-Bleached. It submitted that granting tariff relief would allow Canadian manufacturers within the home furnishing industry to compete more favourably with lower-cost imports.

Lubertex Inc. (Lubertex), located in Montréal, Quebec, is an importer of printed, dyed and bleached woven cotton/polyester fabrics for resale to domestic manufacturers of home furnishings, apparel and institutional and industrial products.

Lubertex supported the requests for tariff relief and submitted that it should be granted on all cotton/polyester fabrics for the same end uses (i.e. comforters, pillow cases, etc.), whether the composition is 50/50 cotton/polyester or 65/35 cotton/polyester, as long as the fabrics are within the weight category (low end use) which, it claims, are not woven in Canada.

Lubertex submitted that the benefits of tariff relief would allow importers like itself and Beco to compete with U.S. and other offshore finished goods. It further submitted that the new giant retailers in Canada are demanding lower and lower prices from manufacturers every year and that these price pressures, coupled with increasing costs, create a very difficult competitive situation for manufacturers, where their survival is at stake. Therefore, any tariff relief is seen as a positive step by Lubertex.

Richmond Quilting Ltd. (Richmond Quilting), located in Richmond, British Columbia, is a manufacturer of home furnishings. It purchases the subject fabrics which are imported from India and Pakistan. Richmond Quilting supported the requests for tariff relief and requested that tariff relief be granted on the imports that it uses. It claimed that the recent world shortage of cotton and rising prices would render its products non-competitive with imports of finished products. Richmond Quilting submitted that, if tariff relief is granted, it will be able to compete with imports and maintain its production level or possibly increase it.

Simplex, located in Montréal, is an importer of fabrics. It supplies the manufacturing segment of the home furnishing industry that produces bedding products.

Simplex submitted that, given the current economic situation, Beco's requests for tariff relief were more than justified, especially in the case of the subject cotton fabric, and that such tariff relief would not cause injury to any domestic producer.

Domestic Producers of Identical or Substitutable Fabrics

C.S. Brooks, located in Magog, Quebec, an integrated producer, manufactures both fabrics and bedding products. For the most part, its production of fabrics is for its own manufacture of bedding, which is sold through Springs Canada, Inc. (Springs Canada) which acts as a sales agent. Springs Canada is a subsidiary of Springs U.S., the largest bedding manufacturer in the United States.

C.S. Brooks claimed that it produces fabrics identical to or substitutable for the subject fabrics. It produces 100 percent cotton fabrics and 50/50 cotton/polyester blends, in widths ranging from 116 to 307 cm and measuring less than 300 decitex per single yarn. The weights of these fabrics vary from 90 to 200 g/m^2.

With regard to cotton/polyester fabrics, C.S. Brooks submitted that the technical characteristics or distinguishing features of the subject cotton/polyester fabric are no different from those of the fabrics that it produces. C.S. Brooks claimed that the subject cotton/polyester fabric is lower-priced, but, in the absence of other differences, that is not sufficient to conclude an absence of substitutability. C.S. Brooks argued that the circumstances in this case are different from those in other cases where the Tribunal has recommended that tariff relief be granted using price as a determining factor, mainly in that the subject cotton/polyester fabric already is lower-priced than domestically produced fabrics. In this type of situation, it was argued, the potential for harm to the domestic producers is much greater.

In response to Beco's assertion that the only domestic suppliers of identical or substitutable fabrics were its competitors in the end-use market, C.S. Brooks argued that substitutability cannot be determined on a firm's unwillingness to do business with a particular supplier, even if the supplier is also a competitor. Finally, it stated that there is no way to be certain that, if tariff relief is granted, the subject cotton/polyester fabric will only be used to produce comforters for the U.S. market and that there is a real threat of diversion of the subject cotton/polyester fabric to the production of comforters for sale in the Canadian market in direct competition with C.S. Brooks' lines of comforters.

Concerning the subject cotton fabric and Beco's claim that it needed tariff relief to counter the effects of higher cotton prices, C.S. Brooks noted that increases in cotton prices affected all producers.

C.S. Brooks argued that, depending on the availability of fabrics and prices, buyers of fabrics will switch from 100 percent cotton to 70/30 cotton/polyester or 50/50 cotton/polyester. C.S. Brooks maintained that, in general, potential consumers of promotional items do not discriminate between products made from cotton/polyester or 100 percent cotton. C.S. Brooks also submitted that the testimony during the hearing supported this contention, that price and visual appearance are the two key factors in the promotional or low end of the market and that, furthermore, these lower-priced fabrics can be used to manufacture products to be sold at higher price points, which compete directly with C.S. Brooks' product lines. C.S. Brooks also contended that the price of Beco's budget comforters had an impact on the price that it was able to obtain for its comforters in higher price point market segments.

Wink, located in Saint-Léonard, Quebec, also an integrated producer, manufactures both fabrics and bedding products. It also sells some of its fabrics to other bedding manufacturers.

Wink opposed the requests for tariff relief. It claimed that its finished products, composed of 50/50 cotton/polyester blends, offer the same choice to the consumer as Beco's products made from the subject cotton/polyester fabric. According to Wink, all of these commodities are perceived by the consumer to be the same and are substitutable. Wink also claimed that, in the Canadian market, purchasers of comforters do not distinguish between cotton/polyester fabrics and 100 percent cotton fabrics and that Wink's products made from cotton/polyester fabrics are price-competitive to Beco's products made from the subject cotton fabric. Wink submitted that it had lost at least one major account for one line of comforters to Beco's products. To further support its contention of competitiveness between the products, Wink pointed out that the evidence indicated that Beco's queen-size budget comforter had the same dimensions as Wink's double-size comforter and was priced the same as or slightly lower than Wink's product.

Wink argued that 100 percent cotton and cotton/polyester fabrics were all competitive in the Canadian market and that only in the U.S. market was there any differentiation between 100 percent cotton and cotton/polyester blends. Further, since Wink's exports to the U.S. market are not insignificant, it is alleged that any tariff relief on the subject fabrics will directly affect Wink's competitive position with Beco in that market. Wink also stated that, although Beco claimed that it would export all finished products manufactured from the subject cotton/polyester fabric to the United States, the proposed tariff relief would also apply to other Canadian manufacturers which import the subject fabrics and sell their finished products in the Canadian market.

Wink argued that it was able and willing to supply domestically produced fabrics to Beco and that the two companies had had discussions about fabric supply in the past. These discussions, according to Wink, broke down strictly on the matter of price, not on the fibre mix, the cotton-rich factor or any other factor. Finally, Wink argued that Beco's contention that it does not want to purchase its fabrics from a competitor is proof that the products of the two firms do indeed compete with one another in this market.

Consoltex, located in Ville Saint-Laurent, is the major Canadian manufacturer of man-made fabrics. Its Home Furnishings division supplies manufacturers of curtains, drapes and tablecloths. A major customer of Consoltex is one of its own divisions, Maison Condelle, a manufacturer of curtains, drapes and bedroom furnishings.

Consoltex submitted that Beco's requests for tariff relief threaten the interests of two of its divisions, Home Furnishings and Maison Condelle. It opposed the requests for tariff relief for the following reasons:

(1) the subject fabrics are available from North American production; and

(2) in the particular case of curtains and drapes, duty-free access to the subject fabrics is likely to damage two of Consoltex's divisions:

- Home Furnishings, as a fabric supplier of identical or substitutable fabrics to manufacturers of curtains and drapes; and
- Maison Condelle, as a manufacturer of finished curtains and drapes.

Among the curtain fabrics offered by the Home Furnishings division, there are two fabrics, Basic Trevira F.R. and Sedura, made from 100 percent polyester, which are used to make printed draperies. These fabrics, according to Consoltex, compete directly with the subject fabrics.

Consoltex also submitted that the substantial tariff reductions already provided through Multilateral Trade Negotiations (MTN), the *Canada-United States Free Trade Agreement*[8] and NAFTA pose a major challenge for Canadian textile manufacturers which are in the process of adjusting to these changes. It claimed that a complete and unilateral removal of the tariff on the subject fabrics would undermine Consoltex's ability to meet the challenges and take advantage of the opportunities created by NAFTA.

Rayonese Textile Inc. (Rayonese), located in Saint-Jérôme, Quebec, produces a range of fabrics used in the manufacture of home furnishings. It also dyes and prints imported greige fabrics on a commission basis. It manufactures four different qualities of cotton/polyester fabrics and one polyester/viscose fabric that it considers substitutable for the subject fabrics for the home furnishing industry.

Rayonese opposed the requests for tariff relief for the following reasons:

(1) its fabrics are substitutable for the subject fabrics;

(2) it suffered a substantial decline in the production of its fabrics in 1995 due to lower demand in the retail sector and an increase in the market share held by imported fabrics; and

(3) a continued advantage given to imports from low wage producing countries will continue to erode sales of its fabrics and run contrary to the spirit and understanding of NAFTA.

Doubletex submitted that its fabrics for home furnishings are substitutable for the subject fabrics. Further, it claimed that substitutable fabrics were available from either domestic producers, fabric converters or fabric producers in one of the NAFTA countries and argued that, in the home furnishing industry, price tends to be the main determinant of sourcing patterns, as commodity fabrics are used in this industry. According to Doubletex, the home furnishing industry tends to be much less sensitive than the apparel industry to distinct fabric requirements. It also argued that fabric and fabric composition are not important factors in consumers' purchase decisions, but that colour, packaging and marketing are more important.

Doubletex opposed the requests for tariff relief because, if tariff relief is granted on the subject fabrics, which are substitutable for a broad range of dyed and printed fabrics, there will be a significant shift from fabrics produced by Doubletex to the low-cost subject fabrics. Allegedly, other bedding manufacturers

8. Canada Treaty Series, 1989 (C.T.S.), signed on January 2, 1988.

will also follow Beco's lead because of the price advantages that tariff relief will provide. Doubletex pointed out that the *Customs Tariff* does not differentiate between fabrics for use in products to be sold in the Canadian market and those for use in products to be sold in export markets and, therefore, tariff relief, if granted, could lead to duty-free imports replacing domestically produced or domestically converted fabrics in products sold in the Canadian market. Furthermore, Doubletex stated that the subject fabrics were already less expensive than the domestically produced fabrics and that tariff relief had never before been granted in that situation.

Doubletex also submitted that it would be anomalous and contradictory to sound public policy to remove the tariff on the subject fabrics while leaving the tariff on the greige (unbleached or bleached) fabrics, as this would discourage any value added in Canada and would serve to give the impression to industry that the federal government was promoting imports over domestic production. Therefore, Doubletex requested that, if the Tribunal recommends that tariff relief be granted on the subject fabrics, it should also recommend that tariff relief be granted on the greige fabrics of the same description.

The **CTI**, representing Canadian textile manufacturers, opposed the requests for tariff relief. The CTI supported the submissions of the textile manufacturers that made representations to the Tribunal on this matter. It argued that it would not be proper to recommend tariff relief on the subject cotton fabric, which is already less expensive than similar, substitutable domestic fabrics. The CTI submitted that the reason that no Canadian or even North American textile mills produced an identical 100 percent cotton fabric is the plain fact that it is available at such a low price from offshore sources.

The CTI also submitted that polyester fibres were designed to imitate cotton fibres and be substitutable for cotton in many applications and that, by their very design, cotton/polyester blends are substitutable for 100 percent cotton. Further, according to the CTI, the testimony of retailers confirmed that cotton/polyester fabrics are substitutable for 100 percent cotton fabrics, especially in the applications relevant to the requests for tariff relief.

In closing, the CTI argued that there is no reasonable basis upon which the requested tariff relief is justified and that such tariff relief would exacerbate the concerns of investors in textile production.

Other Representations

The **Department of Industry** informed the Tribunal that both the Canadian and the U.S. textile industries produce 100 percent cotton and cotton/polyester broadwoven fabrics to manufacture the range of home furnishings identified in the requests for tariff relief. It recommended that the Tribunal consider, in making its recommendation, the various NAFTA rules relative to the origin of goods, the tariff preference levels, the duty refund system, the way in which these NAFTA elements impact on a firm's success in the United States and Mexico and the merits of influencing the firm to look increasingly to North American sourcing of similar home furnishing fabrics.

ANALYSIS

In this investigation, the Tribunal is concerned with the issues of, first, the availability of identical or substitutable fabrics produced in Canada, second, the impact of granting tariff relief on domestic producers and, finally, the net economic implications of granting tariff relief.

The Subject Cotton/Polyester Fabric

With respect to the subject cotton/polyester fabric, Beco submitted that it could not purchase substitutable fabrics from Canadian producers, as the only two potential sources were also competitors in the end-product market. Beco further submitted that, as its imports of the subject cotton/polyester fabric were only used in the manufacture of bedding products that are exported to the United States, there would be no cost to Canadian producers if tariff relief were granted.

The evidence is clear and uncontested that cotton/polyester fabrics are produced in Canada by C.S. Brooks and Wink, albeit not in the 80/20 cotton/polyester blend desired by Beco, and are used to manufacture bedding products that compete directly in the domestic marketplace with the products of Beco and other producers that use the subject cotton/polyester fabric. Several witnesses at the hearing confirmed that purchasers of comforters do not differentiate between 80/20 and 50/50 blends of cotton/polyester, or any other blends,[9] and that no specific blend confers an advantage over another one.

The reality of the U.S. market is somewhat different. In the United States, Beco has identified and filled a market niche for cotton-rich comforters and, as such, will not use anything but fabric that contains more than 51 percent cotton. The Tribunal accepts the contention of the domestic textile producers that they can produce and sell cotton-rich fabrics to Beco and that the substitutability of a fabric cannot be determined by a firm's alleged unwillingness to do business with a supplier, even if that supplier is a competitor in the end-use market. To do so would effectively punish vertically integrated producers for the efficiencies that they have gained through vertical integration. Moreover, it is apparent that Beco could use domestic cotton/polyester fabrics for its bedding product lines, if they were available at a competitive price.

Even if C.S. Brooks, Wink or other Canadian textile producers could not provide Beco with the required fabrics, reduced tariffs on the subject cotton/polyester fabric would enhance the competitiveness of the subject cotton/polyester fabric in the Canadian market at the expense of domestically produced or finished fabrics sold to bedding manufacturers. Moreover, the lower-cost subject cotton/polyester fabric would further enhance the competitiveness of bedding manufacturers that use the subject cotton/polyester fabric, thus adversely affecting the Canadian bedding manufacturers that use domestically produced fabrics for their production. Thus, integrated producers such as C.S. Brooks and Wink would be adversely affected at both the textile production level and the bedding manufacturing level.

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9. Transcript of Public Hearing, May 8, 1996, at 21-22, 27, 33-34 and 73.

Beco has suggested that tariff relief could be limited to the subject cotton/polyester fabric used in export sales to ensure that the domestic textile industry is not hurt by the measure. However, as a result of NAFTA rules, Canada cannot provide tariff relief that is restricted to fabrics for use in manufacturing goods destined for NAFTA markets. The Tribunal notes that, even if the subject cotton/polyester fabric were used for export production, granting tariff relief on an export-only basis would have a negative impact on Wink's activities in the U.S. market, where it operates in direct competition with Beco, selling comforters produced with Canadian fabrics.[10] Furthermore, while it is clear that Beco uses at least the majority of its imports of the subject cotton/polyester fabric to produce comforters for the U.S. market, the evidence presented during the Tribunal's investigation indicates that some of its imports were used in the manufacture of comforters sold in the Canadian market, admittedly in error.[11] In addition, other importers could use the subject cotton/polyester fabric to produce comforters for the Canadian market, in direct competition with comforters made from domestically produced fabrics.

The Tribunal believes that granting tariff relief would have serious implications for the domestic textile industry. Home furnishings, such as bedding products, represent the vast majority of C.S. Brooks' and Wink's annual production volume. Both C.S. Brooks and Wink stated that they would supply fabrics to Beco for the manufacture of its bedding products.[12] Indeed, representatives of Wink testified that they had had discussions with Beco about supplying a cotton/polyester fabric for Beco's production of comforters and that those discussions fell apart on the question of price, and only price.[13]

While the elimination of the duty drawback provisions will undoubtedly cause cost increases for Beco, it should be noted that the elimination of duty drawbacks and the consequent cost increases are being, and will continue to be, offset to some degree by the ongoing reductions in MFN tariff rates.

Therefore, the Tribunal concludes that the subject cotton/polyester fabric competes with fabrics made in Canada, that the end products made from the subject cotton/polyester fabric compete with end products manufactured by C.S. Brooks and Wink from domestically produced fabrics and that the costs ensuing from tariff relief will greatly outweigh any benefits that will result if tariff relief is granted.

The Subject Cotton Fabric

The Tribunal notes that 100 percent cotton fabrics similar to the subject cotton fabric for use in the production of comforters are not available from domestic producers. However, the evidence indicates that consumers do not differentiate between 100 percent cotton fabrics and fabrics made from cotton/polyester blends.[14] Moreover, the uncontroverted testimony of several witnesses clearly indicates that the most important factors in the purchase of a budget comforter are price and visual appearance, not the fibre content

10. *Ibid*. at 224-25 and 234.
11. *Supra* note 9 at 178-84; and Producer's Exhibit B-10, Administrative Record, Vol. 9.
12. Tribunal Exhibit TR-95-035-41 at 10, Administrative Record, Vol. 5; and *supra* note 9 at 221-23.
13. *Supra* note 9 at 222-23.
14. *Supra* note 9.

of the fabric.[15] Furthermore, the packaging for Beco's budget comforter does not mention the fibre content of the fabric,[16] only the type of filling material is listed, leading to the conclusion that the fact that the fabric is 100 percent cotton is not important to the consumer. Thus, the Tribunal concludes that the domestically produced cotton/polyester fabrics, while sold at higher prices than the subject cotton fabric, are nonetheless physically substitutable for the subject cotton fabric.

Indeed, domestically produced cotton/polyester fabrics are being used to produce comforters by various Canadian bedding manufacturers. Beco submitted that its budget comforters do not compete directly with other comforters due to the smaller dimensions of the budget comforters and the low price point at which they are offered. However, it is interesting to note that Beco's queen-size budget comforter has the same dimensions as Wink's double-size comforter and that, when the Wink comforter is "featured" at retail (i.e. is offered at a sale price), it is very close in price to Beco's queen-size comforter.[17]

The witnesses for the retail trade stated that there is not a direct relationship between the prices for the budget comforters and the prices for comforters at higher price points. However, the witnesses for Springs Canada and for Wink stated that retailers would often pressure them on price based on price levels at other price points[18] and that the price gap between price points must remain within a certain range. The Tribunal agrees with the argument put forward by C.S. Brooks and Wink that, if Beco is able to offer its opening price point budget comforters at lower prices as a result of lower costs gained through tariff relief, then these lower prices will have an impact on the price that can be obtained by C.S. Brooks, Wink and other producers of comforters in the higher price point sectors that use domestically produced fabrics in their products. That is, the Tribunal believes that there is an implicit relationship between the prices for products offered at different price points and that, while there may be no set price relationship between the price points, the price gap between the price points must remain within a certain range. In addition, the subject cotton fabric can be used by Beco or other manufacturers to produce full-size comforters that would compete directly with the comforters made from domestically produced fabrics.

Beco submitted that it needs tariff relief to counter the effects of increasing cotton prices, while other parties pointed out that all producers, foreign and domestic, are affected by higher raw material costs, including cotton costs. In any case, the evidence indicates that cotton prices have flattened out and are expected to decrease in the near future.

The Tribunal, therefore, concludes that domestically produced cotton/polyester fabrics are substitutable for the subject cotton fabric used in the manufacture of budget comforters. In addition, the price at which the budget comforters are available on the market has an influence on the price obtainable by other manufacturers of comforters. Consequently, granting tariff relief on the subject cotton fabric will have serious

15. *Ibid.* at 27-29, 33-34, 82 and 92-93.
16. Producer's Exhibit B-10, Administrative Record, Vol. 9.
17. Public Staff Investigation Report, February 5, 1996, Tribunal Exhibit TR-95-035-28, Table 5, Administrative Record, Vol. 1; and *supra* note 9 at 133.
18. *Supra* note 9 at 199-202, 212 and 219; and Transcript of *In Camera* Hearing, May 8, 1996, at 9.

adverse effects on both the domestic textile producers and the manufacturers of comforters that use domestically produced fabrics. The potential financial cost to these two levels of production far exceed the benefits that would accrue to Beco and other importers of the subject cotton fabric if tariff relief were granted.

RECOMMENDATION

In view of the above information and evidence before the Tribunal in this matter, the Tribunal hereby recommends to the Minister that tariff relief on importations of the subject cotton/polyester fabric covered by Request No. TR-95-035 and on importations of the subject cotton fabric covered by Request Nos. TR-95-043 and TR-95-044 not be granted.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Lyle M. Russell
Lyle M. Russell
Member