



**REPORT TO
THE MINISTER OF FINANCE**

**REQUESTS FOR TARIFF RELIEF BY
FREED & FREED INTERNATIONAL LTD.
AND FEN-NELLI FASHIONS INC.
REGARDING
CERTAIN WOVEN FABRICS OF WOOL AND/OR
FINE ANIMAL HAIR OR BLENDS THEREOF WITH
SYNTHETIC STAPLE FIBRES**

AUGUST 27, 1996

**REQUEST NOS.: TR-95-010
AND TR-95-034**

**FREED & FREED INTERNATIONAL LTD.
AND FEN-NELLI FASHIONS INC.**

Request Nos.: TR-95-010 and TR-95-034

Tribunal Members:	Raynald Guay, Presiding Member Robert C. Coates, Q.C., Member Desmond Hallissey, Member
Research Director:	Réal Roy
Research Manager:	Audrey Chapman
Counsel for the Tribunal:	Gerry Stobo
Registration and Distribution Officer:	Claudette Friesen

Address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference¹ 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, the Tribunal received requests from Freed & Freed International Ltd. (Freed & Freed) of Winnipeg, Manitoba, on June 1, 1995, from E. & J. Manufacturing Ltd. (E. & J. Manufacturing) of Montréal, Quebec, on July 12, 1995, and from Fen-nelli Fashions Inc. (Fen-nelli) of Montréal on July 13, 1995, for the permanent removal of the customs duty on importations, from all countries, of woven fabrics of carded yarns, solely of wool or fine animal hair, or containing 75 percent or more by weight of wool or of fine animal hair mixed with synthetic staple fibres, of a weight exceeding 300 g/m² but not exceeding 500 g/m², for use in the manufacture of women's and men's overcoats (the subject fabrics).

On October 31, 1995, the Tribunal, being satisfied that the requests were properly documented, issued a notice of commencement of investigation, which was distributed and published in the November 11, 1995, edition of the *Canada Gazette*, Part I.³ The request filed by E. & J. Manufacturing was subsequently withdrawn on November 23, 1995.

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. Questionnaires were also sent to known users of fabrics identical to or substitutable for the subject fabrics. A letter was sent to the Department of National Revenue (Revenue Canada) requesting information on the tariff classification of the subject fabrics, and samples were provided for laboratory analysis. Letters were also sent to a number of other government departments requesting information and advice.

A staff investigation report, summarizing the information received from these departments, Freed & Freed, Fen-nelli and other firms that responded to the questionnaires, was provided to parties that had filed notices of appearance for this investigation. These parties are: Freed & Freed; Fen-nelli; the Canadian Textiles Institute (CTI); CookshireTex Inc. (CookshireTex); Victor Woollen Products Ltd. (Victor); S. Cohen Inc. (Cohen); Adorable Junior Garments Inc.; Hannah Ladies' Wear Ltd. (Hannah); Cardinal Clothes Inc. (Cardinal); and Shiff & Co. Inc. (Shiff).

Following the distribution of exhibits and the staff investigation report to parties, CookshireTex, Victor, Cardinal, Shiff and the CTI filed submissions with the Tribunal, to which Freed & Freed and Fen-nelli provided responses. The President of the Northern Textile Association (NTA) in the United States

1. On March 20 and July 24, 1996, the Minister of Finance revised the terms of reference.

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

3. Vol. 129, No. 45 at 3851.

wrote a letter to the Minister expressing the NTA's opposition to the requests for tariff relief on the subject fabrics. This letter was copied to the Tribunal for information.

On November 29, 1995, the Tribunal received a notice of motion filed by Mr. Peter E. Kirby, counsel for CookshireTex. The motion requested the following relief:

- (a) An Order of the Tribunal discontinuing Reference No.: TR-95-010;
- (b) An Order of the Tribunal continuing Reference No.: TR-95-034 in respect only of the following subject goods:
 - “1. 100% carded wool, dyed, having a weight of between 21-23 oz. linear (i.e. approximately 570 g/linear meter); and
 2. 100% carded wool velour fabric weighing 560 g/linear meter”.
- (c) An Order of the Tribunal extending the period in which CookshireTex Inc. may file its response to the Request for Tariff Relief to ten days following the release of the Tribunal's order in the present Motion.

The Tribunal sent a letter to counsel and parties on January 5, 1996, requesting comments on the notice of motion. In this regard, two parties provided comments: Mr. Dennis Bishop, the representative of Freed & Freed, and Mr. Patt MacPherson, the representative of the CTI and Victor.

The Tribunal issued its decision regarding the notice of motion on February 27, 1996. It informed parties that the fabric description under investigation was amended to include a price point of \$8.00/linear metre or more (approximately \$5.26/m², assuming an average fabric width of 1.52 metres). However, the Tribunal denied the motion for an order discontinuing the investigation in Request Nos. TR-95-010 and TR-95-034.

A public hearing was not held for this investigation.

PRODUCT INFORMATION

The fabrics covered by the request for tariff relief filed by Freed & Freed (TR-95-010) are classified under classification Nos. 5111.19.00.10⁴ and 5111.30.92.00⁵ of Schedule I to the *Customs Tariff*.⁶ They are presently dutiable at 19.0 percent *ad valorem* under the MFN; at 12.0 percent *ad valorem* under the GPT; at 5.0 percent *ad valorem* under the US tariff; and at 8.2 percent *ad valorem* under the Mexico tariff. Fabrics classified under classification No. 5111.19.00.10 are also dutiable at 18.0 percent *ad valorem* but not to exceed \$1.32/kg under the BPT.

4. Woven fabrics of carded wool or of carded fine animal hair, containing 85 percent or more by weight of wool or of fine animal hair, for apparel.

5. Woven fabrics of carded wool or of carded fine animal hair, mixed mainly or solely with man-made staple fibres, of a weight not exceeding 300 g/m².

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

The fabrics covered by the request for tariff relief filed by Fen-nelli (TR-95-034) are classified under classification No. 5111.30.92.00. These fabrics are a subset of the fabrics covered by Request No. TR-95-010 and, as such, the Tribunal decided to combine the two requests and to conduct a joint investigation.

Freed & Freed and Fen-nelli state that they use the subject fabrics in the production of quality women's overcoats. Freed & Freed submits that it also uses the subject fabrics in the production of men's overcoats. Freed & Freed and Fen-nelli make the distinction between medium- and high-quality overcoats and low-quality overcoats. In Request No. TR-95-010, the subject fabrics are for use in the manufacture of high-quality women's and men's long and short overcoats, while in Request No. TR-95-034, the subject fabrics are for use in the manufacture of moderately priced, fine woven, women's wool overcoats. Both requests state that there are no acceptable substitutes of a comparable quality available domestically.

Revenue Canada provided the following suggested product description in the event that tariff relief is granted:

Woven fabrics, of carded yarns, solely of wool or fine animal hair, or containing 75 per cent or more by weight of wool or fine animal hair mixed with synthetic staple fibres, of a weight exceeding 300 g/m² but not exceeding 500 g/m², of subheading Nos. 5111.19 and 5111.30, for use in the manufacture of outer garments of Heading 62.02.

The suggested definition puts an upper and lower limit on the weight of the fabrics which would qualify for tariff relief. It is interesting to note that, currently, the tariff codes that apply to the subject fabrics do not have an upper weight range limit, but do have the lower weight restriction. In this respect, a number of users of the subject fabrics have commented that they import fabrics, which they believe have a weight slightly above 500 g/m², and that these fabrics should also be included as part of the subject fabrics because they claim that these fabrics are not available in Canada.

Further, the suggested definition by Revenue Canada includes a reference to the production of outer garments of heading No. 62.02. This would restrict the end use to women's overcoats, despite the fact that one of the requests specifically seeks tariff relief on the subject fabrics for use in the manufacture of both women's and men's overcoats.

Revenue Canada's laboratory analysis describing the technical specifications of the samples provided by Freed & Freed and Fen-nelli was provided to the Tribunal on October 16, 1995. Revenue Canada also provided the laboratory analysis for fabrics submitted to the Tribunal by Hannah.

Two Canadian producers, CookshireTex and Victor, also supplied sample fabrics to the Tribunal. They claim that their fabrics are identical to and substitutable for the subject fabrics. Accordingly, the Tribunal sent these samples to Revenue Canada for analysis on March 19, 1996. The Tribunal received the laboratory result on May 21, 1996.

Imports of the subject fabrics, in 1995, as reported by interested parties, totalled 300,000 linear metres, with a value for duty of approximately \$5 million.⁷ A major proportion of the subject imports originate in Italy.

The apparent Canadian market for the subject fabrics and the allegedly identical and substitutable fabrics for use in the production of women's and men's overcoats, in 1995, is estimated to be 410,239 linear metres. This estimate is based on the combined purchases of imports reported by Freed & Freed and Fen-nelli and other users and importers responding to the Tribunal's questionnaires and on the volume of domestic sales of the allegedly identical and substitutable fabrics. Currently, imports account for the major proportion of the market. However, Canadian producers claim that, with the recent introduction of domestically produced fine wool and wool blends, domestic sales of allegedly identical and substitutable fabrics are expected to grow dramatically in future years.

REPRESENTATIONS

Freed & Freed and Fen-nelli

Freed & Freed originated in the late 1920s and is currently engaged in the manufacture of women's and men's outerwear and co-ordinated apparel, predominantly under the brand name "London Fog," and is the largest domestic manufacturer of women's outerwear. The company is 100 percent Canadian owned and operated.

Freed & Freed acknowledges that there is Canadian production of woollen fabrics; however, Canadian fabrics are of a lesser quality compared to the subject fabrics and are suitable for the manufacture of low-quality wool overcoats. Freed & Freed submits that the fabrics produced by CookshireTex and Victor are not substitutable for those that it uses to manufacture its high-quality outerwear. Freed & Freed submits that its examination of the samples provided by the domestic producers supports this conclusion. In addition, other interested users such as Cardinal, Shiff and Hannah have all agreed that the subject fabrics cannot be obtained from Canadian production.

Freed & Freed notes that fabrics containing 100 percent fine animal hair and wool blended with more than 10 percent fine animal hair are not available in Canada. Freed & Freed argues that these fabrics are required to manufacture the high-quality outerwear that is distinguished from low-quality wool overcoats. In addition, the finishing techniques used by Italian mills produce a sheen on the surface of the fabrics that is carried through to the finished garments. The European mills have achieved their current niche as the producers of the highest-quality fabrics in the world through more than 100 years of evolution. Just because a firm uses similar equipment and European consultants who can perhaps provide insight into quality production, the fabrics will not necessarily be of the same quality. In addition, Freed & Freed argues that,

7. The value of imports of the subject fabrics represents approximately 30 percent of the total value of imports, as reported by Statistics Canada, classified under classification Nos. 5111.19.00.10 and 5111.30.92.00 combined.

simply because domestic producers have invested heavily in upgrades, this does not necessarily translate into immediate comparable quality increases.

Freed & Freed submits that it is no surprise that outerwear made of domestic woollen fabrics are sold in some of the same department stores as high-quality apparel. Freed & Freed suggests that department stores such as Eaton's and The Bay can no longer cater to only one class of consumers. They must carry a range of merchandise that will appeal to a much broader spectrum of customers if they are to survive.

Freed & Freed argues that, because the fabric costs greatly exceed the labour costs in the production of its overcoats, tariff relief of 19 percent (in 1996) on the subject fabrics would directly affect the end price to the consumer.

Further, Freed & Freed contends that the domestic support industries, such as lining fabric producers, trim suppliers and insulation suppliers, would also benefit from the increased sales to their customers, the coat manufacturers. Freed & Freed submits that it purchases linings, trims, insulation, shoulder pads, etc., from domestic suppliers in significant volumes.

Freed & Freed submits that, currently, it, Fen-nelli and all other manufacturers of high-quality outerwear in Canada source their textile inputs outside Canada and will be required to continue to do so whether or not tariff relief is granted. The subject fabrics are not available in Canada and, therefore, the domestic producers do not currently have these sales, nor will they in the future unless substitutable fabrics become available from their production. Therefore, Freed & Freed does not believe that the impact of tariff relief will be as great as the domestic producers claim.

Freed & Freed proposes a more narrowly defined product description which it believes is most fair to the domestic woollen fabric producers and which should alleviate their opposition to the request. In this respect, Freed & Freed agrees that the domestic industry does produce fabrics of wool and wool blended with synthetic staple fibres, although of a lesser quality than imports, and that Revenue Canada would not be able to allow duty-free entry to high-quality fabrics and deny it to low-quality fabrics which will damage domestic production of these types of woollen fabrics. However, it argues that the evidence shows that the domestic industry does not produce fabrics containing 100 percent fine animal hair or wool and fine animal hair blends exceeding 10 percent by weight of fine animal hair. Freed & Freed submits that the one fabric sample submitted by domestic producers in the fine animal hair category is not sufficient proof of domestic production, let alone their ability to supply and serve the market which demands fine animal hair fabrics. Therefore, Freed & Freed suggests that the Tribunal's recommendation could be limited to fabrics containing 100 percent by weight of fine animal hair, or fabrics containing 75 percent or more by weight of wool and fine animal hair, but not less than 10 percent by weight of fine animal hair mixed with synthetic staple fibres.

Fen-nelli began its operations in 1991, principally as a manufacturer of women's overcoats. The request submitted by Fen-nelli is limited to 100 percent virgin wool fabrics. Fen-nelli alleges that the subject fabrics are not available from domestic production. Fen-nelli argues that there are no acceptable substitutes of comparable quality and weight that would meet the appeal of the moderately priced, fine woven, natural

product, such as the 100 percent wool fabric that it imports. In the past, it sourced this fabric from a Canadian producer, Satexil Inc. However, Fen-nelli notes that this company went bankrupt in 1993 and, since that time, it has had to source from imports.

Fen-nelli submits that neither Victor nor CookshireTex has demonstrated its ability to serve Canadian manufacturers of high-quality women's and men's overcoats with 100 percent virgin wool fabrics. Fen-nelli stresses that no data have been provided to the Tribunal of sales of substitutable fabrics. Fen-nelli notes that the question of whether Victor and CookshireTex will become active in the supply of identical or substitutable fabrics has been pending for over three years. Fen-nelli asks how much longer coat manufacturers must wait for the domestic producers to provide high-quality, 100 percent virgin wool fabrics which possess the required drapeability, finish and hand of the subject fabrics which are readily available from Italian sources.

Fen-nelli claims that the requested tariff relief will provide the necessary catalyst for expansion of plant facilities and product lines, thereby creating additional labour opportunities and cost savings which would assist in competing with low-cost imports of finished garments. In this regard, Fen-nelli reports that its major competition comes from imports of finished goods from low-cost, foreign markets and, as such, tariff relief will assist in creating a level playing field and facilitate Fen-nelli's current expansion plans, while enabling it to generate a viable export market.

Fen-nelli currently purchases certain woollen fabrics from domestic producers. However, it argues that the higher-quality 100 percent virgin wool fabric is not available from Canadian production.

Other Users of the Subject Fabrics

Hannah of Toronto, Ontario, has been in business since 1944 and has produced women's overcoats of superior quality for the past 51 years. In addition, it produces a variety of women's jackets made of the same fabrics as the overcoats which are classified as outerwear.

Hannah claims that there are no Canadian mills left to supply the quality and designs of fabrics that its market requires. Hannah supports the requests for tariff relief, because it would enable it to cover a much larger marketplace and bring the final prices of its garments to a more competitive level. The necessity to purchase offshore has caused Hannah's prices to continue to rise and its margins to drop. Hannah claims that, with the Canadian dollar not having any stability in foreign markets and labour prices continuing to rise, the existence of the domestic manufacturers of high-quality overcoats in Canada is at risk.

Cardinal of Montréal is a Canadian manufacturer of high-quality men's and women's tailored overcoats and blazers. It was established in 1958. It sells its products to the retail industry across Canada and in other countries, mainly the United States. Cardinal supports the requests for tariff relief because it is of the opinion that there are no domestic producers currently manufacturing or even capable of manufacturing fabrics identical to or substitutable for the high-quality fabrics that it uses in its production.

Cardinal states that, while the fabrics that it uses do fall under the technical description of the subject fabrics as outlined in the notice of commencement of investigation, they are not identical to or substitutable for the subject fabrics in that they are of a higher quality than the subject fabrics.

Cardinal submits that its market niche consists of high-priced overcoats, jackets and blazers. Cardinal sells its overcoats to upper scale retailers, under exclusive trade names, with a relatively high average wholesale delivered selling price.

Cardinal submits that the fabrics that it imports are not in direct competition with those manufactured by Victor. Further, it points out that none of the domestic producers' major customers have shown an interest in this investigation. Therefore, Cardinal argues that the domestic producers would not face increased competition from foreign suppliers of higher-quality fabrics.

Shiff of Montréal is a Canadian manufacturer of women's overcoats. It was established in 1919 and sells its production to the retail trade across Canada. Shiff used to export part of its production to the United States, but has since stopped because it claims that its export prices were no longer competitive with overcoats made in the United States.

Shiff supports the requests for tariff relief because it submits that fabrics identical to or substitutable for the subject fabrics are not available from Canadian production. Shiff argues that, if such fabrics were available from domestic production, it would buy them.

Shiff argues that its foreign suppliers provide certain services and selection with which the domestic suppliers simply cannot compete. For example, the foreign suppliers not only respond in a timely fashion to its particular needs but also go beyond these needs and offer a selection of new styles and colour patterns. They not only follow trends but also create new ones.

Cardinal and Shiff submit that the Tribunal must give serious consideration to the consequences of the *North American Free Trade Agreement*⁸ (NAFTA) restriction on drawbacks. Cardinal and Shiff submit that the drawback entitlements will be reduced to zero in 1998 and stress that is "perhaps the greatest concern of Canadian coat manufacturers today."

Cohen of Montréal began its operations in 1923. It currently employs in excess of 100 people. Cohen submits that it is one of Canada's largest manufacturers of men's fine tailored clothing and is the largest manufacturer of tailored overcoats in Canada. Cohen also produces tailored suits, sport jackets, blazers, tuxedos, vests, trousers and walking shorts.

Cohen supports the requests for tariff relief and seeks the permanent removal of all duties on the subject fabrics. Cohen argues that it has been unable to find identical, substitutable or even similar fabrics over the past two years. It claims that the finishing equipment to provide the variety of finishes needed does

8. 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).

not exist in Canada. Further, the fine yarns required for these fabrics are not available in Canada and have always come from Europe. Cohen submits that it has viewed the “open line” of potential Canadian suppliers for the past several seasons and that the Canadian suppliers have not shown it anything similar to the fabrics that it imports.

Domestic Producers of Allegedly Identical or Substitutable Fabrics

The **CTI** represents Canadian manufacturers of textiles. It opposes the requests on the basis that substitutable fabrics are produced in Canada. The CTI and Victor submitted a joint submission. The CTI and Victor oppose the requests for tariff relief on the grounds that it would cause serious injury to domestic fabric investment, production and jobs.

Victor of Saint-Victor, Quebec, was founded in 1947. Over the years, it has evolved from manufacturing yarns using the woollen system to weaving, dyeing and finishing. Victor is an integrated operation which begins with the purchase of wool and synthetic fibres. It manufactures the yarns and then weaves fabrics from its own yarns. Victor also dyes and finishes the fabrics.

Victor submits that, today, it produces and sells many fine woollen fabrics, including velours and flannels for use in men’s and women’s overcoats. Victor produces a wide range of fabrics, from 30 percent wool to 100 percent wool. The yarns used are carded yarns spun on the woollen system and range from a fine count to a coarse count. The fabric weights vary from 220 to over 1,000 g/m², with more than 90 percent of its production falling between 300 and 500 g/m². Fabric widths are normally 150 to 154 cm.

Victor opposes the requests for permanent removal of the customs duty on importations of the subject fabrics for a number of reasons. It argues that duty-free entry of the subject fabrics will reduce the price and margins at which Victor can sell all its fabrics in Canada to a point where its return on investment would be severely affected and the production of women’s and men’s fabrics for overcoats would be destroyed. In addition, Victor anticipates a major reduction in sales volume if custom duties are removed because of increased competition from foreign fabric suppliers. Further, the investments made in the last three years for the development of new fabrics and acquisition of new equipment will be undermined if the customer base has duty-free access to these fabrics from other countries.

Victor submits that it has been aggressively moving to develop fabrics for the market segment with the most promising future demand. These fabrics are concentrated in the area above \$8.00/linear metre. It argues that the importance of this segment is increasing. Based on future sales projections, Victor states that the relative importance of the fabrics in this segment will be even greater in terms of sales revenue and gross margin because they are higher in price than the melton fabrics which has been its main business. Therefore, Victor argues that tariff removal for imported woollen fabrics made of wool and wool blends and valued at \$8.00/linear metre and more will strike directly at the future of the company.

Victor claims that it will be subject to various economic pressures if tariff relief is granted. It argues that it would experience loss of sales volume to current domestic manufacturers that would be adversely affected by imported fabrics offered at reduced prices. Victor submits that it would be forced to reduce

prices and lower its margins in order to meet the low price points of imported fabrics. Finally, Victor claims that there would be a decrease in employment resulting in reduced production.

Victor argues that its sales of allegedly identical and substitutable fabrics in 1995 represent the volume of sales for a product line which is in its infancy. Victor estimates that the sales volume for the high-quality wool and wool velour fabrics will increase substantially over the next few years. Therefore, the major negative impact of tariff relief would be the loss of future sales volume in this important and growing sector of the woollen fabric market. In this regard, Victor estimates that future sales of melton, fancies and other lower-quality woollen fabrics will decrease over time. To date, these other fabrics have been the mainstay of the business; however, Victor claims that this trend is already changing.

In summary, Victor argues that identical or substitutable fabrics are available from Canadian sources. Victor submits that its research and development team is constantly working on new fabrics and tries to keep up with the demand of the marketplace. As a result of the departure of Satexil Inc. from the marketplace, Victor claims that it is in a position to manufacture higher-quality fabrics, as demonstrated by the sample fabrics submitted to the Tribunal.

Finally, the CTI and Victor agree that Code 4225 of Schedule II to the *Customs Tariff* deserves some consideration in providing some tariff relief, as it applies to fabrics valued at \$16.74/m² or more (approximately \$25.00/linear metre). The CTI and Victor suggest that Code 4225 might be extended to women's overcoats (it is currently limited to men's fine tailored overcoats) to accommodate Freed & Freed and Fen-nelli to some extent without causing injury to Victor. It is stressed that this suggestion is made on the conditions that the price would not be reduced and that rigorous and trustworthy provisions would be made to index the price point annually to compensate for inflation.

CookshireTex of Cookshire, Quebec, was founded in 1943 and is a vertically integrated fabric producer. It produces yarn from raw materials such as wool, synthetic fibres or fine animal hair. It then weaves, dyes and finishes the fabrics. Over the years, with continuous and regular investment, CookshireTex has increased its production capacity as well as its capability. In this respect, CookshireTex initially produced just melton and flannel fabrics. Now, it produces a wide range of woollen fabrics, including velours, 100 percent wool, wool and fine animal hair blends, and wool or fine animal hair and synthetic blends.

CookshireTex opposes the requests for tariff relief. It argues that identical or substitutable fabrics are available from Canadian production. CookshireTex states that the sample fabrics that it submitted demonstrate that it has the capability and capacity to produce identical or substitutable fabrics of equal quality. In support of this contention, CookshireTex claims that most of the overcoats made from its fabrics are sold in major department stores such as Eaton's, The Bay and Sears and in boutique chains such as Le Château and Roots. In the United States, overcoats made from CookshireTex's fabrics are sold in Bloomingdales, J.C. Penney and The Gap group. CookshireTex submits that its clients sell their overcoats to the major high-end retailers in direct competition with Freed & Freed.

In the early 1990s, CookshireTex recognized that the market for woollen fabrics in Canada was undergoing a radical change. Consumer preferences are shifting away from melton fabrics to higher-quality woollen fabrics. CookshireTex submits that it recognized these market changes and began implementing

plans to ensure its continuing place in the Canadian market. These plans included major investments in plant and equipment to produce fine wool and wool velour fabrics. Until late 1992, Satexil Inc. dominated the high end of the fabric market in Canada. With its closure, there was a gap in the market for which CookshireTex was already getting ready to serve. In this respect, CookshireTex submits that, in 1992, it introduced a new line of 100 percent wool velour fabrics to serve the high end of the woollen fabric market.

CookshireTex argues that a duty reduction will have a proportionately greater impact on the ability of domestic fabric suppliers to remain competitive. The removal of a 19 percent MFN duty would translate into a significant price reduction in those imports which, in turn, would have a tremendous impact on CookshireTex's ability to compete in the market. It would significantly alter its competitive position at a time when it has been investing heavily in developing its presence in the market for high-quality woollen fabrics.

In addition, CookshireTex argues that it is wrong to think that the effects of price reductions in one market segment (i.e. wool velours) can be restricted to that segment. The various market segments for fabrics are interrelated, and pricing in one segment affects pricing and demand in another. A reduction in the duty cost of wool velours will lower the price of those blends. This would result in a smaller price differential between the wool velours and melton fabrics, and the demand for melton fabrics will fall. It argues that either the price of melton fabrics will fall to reestablish the price differential and maintain demand or demand for melton fabrics will fall and that for the wool velours will rise.

Other Parties

The NTA wrote a letter to the Minister expressing its concerns and opposition to the requests for tariff relief on woollen fabrics. The NTA represents woollen fabric manufacturers throughout the United States and Canada. It opposes the requests on the grounds that tariff relief would increase access to non-NAFTA fabrics and would further damage US and Canadian manufacturers that produce precisely these fabrics.

The NTA submits that the mills in the United States and Canada which manufacture woollen fabrics for men's and women's outerwear have been severely impacted by fabric imports and particularly by the heavy influx of foreign-made wool garments. The NTA notes that NAFTA was established to enhance trade among countries in North America, and it supports this objective. However, the NTA submits that it sees no necessity for increasing access to this regional market for non-NAFTA fabrics.

The NTA reminds the Minister that the US tailored clothing industry has already been severely impacted by Canadian garments manufactured from non-NAFTA fabrics. In summary, the NTA states that such tariff relief contravenes the spirit and intent of NAFTA and hopes that the Minister will not grant tariff relief based on this "unfair" and "destructive" request.

The **Department of Foreign Affairs and International Trade** informed the Tribunal that Canada does not maintain quota restraints on fabrics classified under classification Nos. 5111.19.00.10 and 5111.30.92.00. However, fabrics of both these classification numbers are included in item 25 of the

Import Control List. Accordingly, Canadian importers wishing to import these products are required, pursuant to the *Export and Import Permits Act*,⁹ to apply for an import permit.

Revenue Canada has indicated that there would be no additional costs, over and above those already incurred by it, to administer the requested tariff relief, should it be granted. Revenue Canada also stated that, should the Tribunal recommend tariff relief, an amendment of certain tariff codes could be considered.

ANALYSIS

The 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 domestically produced textiles for imported textiles, the ability of Canadian producers to serve the Canadian downstream industries, domestic versus imported price comparison, and the extent to which the current and requested textile tariff structures represent a significant factor in investment and/or business decisions by domestic producers.

According to Freed & Freed and Fen-nelli, the overcoats produced with the subject fabrics are of a higher quality and are positioned in the “high-priced” market segment for which there is no Canadian source of fabric input. They claim that the woollen fabrics produced domestically are suitable only for the production of lower-quality overcoats.

The Tribunal believes that there are varying degrees of perceived “quality” of wool, fine animal hair and wool blend fabrics which all fall within the technical description of the subject fabrics. For example, there are melton fabrics, wool and nylon blend fabrics, fabrics mostly of wool and fine animal hair blended with nylon, 100 percent virgin wool fabrics and 100 percent fine animal hair fabrics. It is understood that the yarn type, size, fabric construction and various finishing techniques add different characteristics to fabrics which make them look, feel and drape differently. While these different qualitative steps are somewhat difficult to define precisely, the Tribunal believes that they do exist. This is evidenced by the fact that there are broad price ranges within which different woollen fabrics are placed. For example, melton fabrics are at the lowest end of the price scale, fabrics of wool blended with synthetic staple fibres generally follow, while 100 percent virgin wool fabrics or wool and fine animal hair blends are in the third broad price category. Finally, the 100 percent fine animal hair fabrics, such as cashmere, are at the highest end of the price scale. From a review of the fabric samples provided by Freed & Freed and Fen-nelli and interested parties covering this range of fabrics, it is evident that domestically produced fabrics are substitutable for many of the subject fabrics.

Market acceptance is another indicator of substitutability considered by the Tribunal. Early in the investigation process, E. & J. Manufacturing withdrew its request for tariff relief. E. & J. Manufacturing submitted that it is presently purchasing fabric from a Canadian supplier and that it was very satisfied with the quality of the woollen fabric supplied. Further, evidence of increasing sales of the allegedly identical or

9. R.S.C. 1985, c. E-19.

substitutable woollen fabrics by Canadian producers is another indication of the market's acceptance of the finer woollen fabrics now being produced domestically.

An important factor considered by the Tribunal in this investigation, in addition to the existence of substitutable fabrics, is the ability of the domestic textile industry to supply them. There is evidence that the market for overcoats in Canada is changing from the use of lower-quality melton fabrics to the finer and higher-quality wool, velour and wool mixed with fine animal hair fabrics. The domestic woollen fabric producers, such as CookshireTex and Victor, recognized the changing market conditions and acted by aggressively implementing plans to develop their capacity and capability to produce higher-quality wool and wool blend fabrics.

The evidence in these cases is clear that CookshireTex and Victor are in the early stages of developing and producing woollen fabrics of a higher quality than those produced in the past. The evidence shows that the vast majority of allegedly identical or substitutable fabrics which are currently being produced in Canada are fabrics containing wool and synthetic staple fibre blends. There is very limited production volume of the 100 percent virgin wool fabrics and fabrics containing fine animal hair. The Tribunal believes that domestic producers either are currently producing or will shortly be in a position to produce a certain range of the higher-quality wool fabrics covered by this investigation, but that they are not now, nor will they be in the near future, in a position to produce and supply, in commercial quantities, the very fine quality fabrics solely or mainly of virgin wool or fine animal hair.

In this regard, the Tribunal accepts the arguments made by Freed & Freed and Fen-nelli and other importers that the very high-quality wool and fine animal hair fabrics occupying the highest end of the price scale for woollen fabrics are not available in Canada. The Tribunal is persuaded by the information obtained from Cardinal, for example, that certain of its specific needs for very high-quality wool and fine animal hair fabrics cannot be met from Canadian production. The price point for the subject fabrics is considerably higher than that for fabrics available in Canada. It is not likely that Canadian production of identical or substitutable fabrics will begin in the foreseeable future, as CookshireTex and Victor commented that they will first concentrate on further developing and refining the other fine wool, velour and wool blend fabrics before extending their production capabilities of 100 percent cashmere, for example.

The prices of allegedly identical or substitutable fabrics must also be considered by the Tribunal in assessing the economic impact of granting tariff relief. The evidence shows that domestic prices of the identical or substitutable fabrics are comparable to the landed prices of many of the subject fabrics. The Tribunal agrees with the observation made by CookshireTex that the elimination of a 19 percent MFN duty would translate into a price reduction in those imports which, in turn, would have a serious impact on the domestic producers' ability to compete in the market. It would significantly alter domestic producers' competitive position at a time when they have been investing heavily in developing a presence in the higher-quality woollen fabric market. Furthermore, Freed & Freed also acknowledged that domestic production of lower-quality woollen fabrics would be damaged if the subject fabrics were allowed duty-free entry.

Overall, the Tribunal is of the view that the costs which would be incurred by the domestic textile industry, if tariff relief were granted, would far exceed the benefits to the women's and men's overcoat producers. These costs, as estimated by CookshireTex and Victor, would include reduced prices of wool and wool blend fabrics for Canadian woollen fabric manufacturers. More importantly, tariff relief would obstruct the development and growth of the market for the higher-quality wool and wool blends in the future and, as a result, market opportunities would be lost. With the market shifting away from melton fabrics, the Tribunal is persuaded that the domestic producers must shift gears and offer higher-quality woollen fabrics to coat manufacturers in Canada, which is what some textile manufacturers are now doing.

The Tribunal believes that the domestic industry is in a vulnerable position at this time. Its decisions to make important investments were made in contemplation of the current tariff regime. The Tribunal believes that, if it were to recommend changing the tariff regime at such a critical point in the development of new and replacement market opportunities, the domestic industry would not be able to compete with the subject fabrics, especially considering the prices at which many of these fabrics enter Canada. The complete removal of the tariff in this particular case could irreversibly damage the ability of Canadian producers to grow and succeed in this emerging market in Canada.

However, the Tribunal also concludes that there is no domestic production of certain high-quality wool, fine animal hair and blended fabrics found at the highest end of the price scale. After a careful review and analysis of the potential benefits to users compared to the estimated costs to domestic producers, the Tribunal believes that partial tariff relief is warranted for that limited range of fabrics. The question facing the Tribunal is the following: How can the fabrics which warrant tariff relief be defined from those that do not?

The CTI proposed one definition of fabrics, but the Tribunal finds it to be too narrow. For some guidance on this question, the Tribunal looked to Code 4225, which describes fabrics used in the manufacture of men's fine tailored overcoats, as the fabrics in Code 4225 and the subject fabrics have many similarities. Code 4225 provides for duty-free entry of woven fabrics, containing 95 percent or more by weight of carded yarns of virgin wool or of fine animal hair, valued at \$16.74/m² or more, of tariff item No. 5111.11.90 or 5111.19.00, for use in the manufacture of men's fine tailored overcoats other than car-coats and duffle-coats. Based on an analysis of all the relevant factors, the Tribunal finds that a value of \$13.16/m² (\$20.00/linear metre, assuming a fabric width of 1.52 m) to be an appropriate price point. While setting a price point for the purposes of tariff relief is not an exact science, this one is set at a level that is higher than the prices of woollen fabrics currently produced in Canada. Setting this amount as the price point will still provide the tariff protection required by domestic producers of woollen fabrics, while offering some tariff relief to importers of the subject fabrics.

The Tribunal also agrees that the price point should be indexed annually to provide price protection relative to inflation.

RECOMMENDATION

In view of the above information and evidence before the Tribunal in this matter, the Tribunal hereby recommends to the Minister:

- (1) that tariff relief be granted on woven fabrics, containing 95 percent or more by weight of carded yarns of virgin wool or fine animal hair, mixed with synthetic staple fibres, of a weight exceeding 300 g/m² but not exceeding 500 g/m², valued at \$13.16/m² or more (\$20.00/linear metre or more, assuming a fabric width of 1.52 m), indexed annually to compensate for inflation, of subheading Nos. 5111.19 and 5111.30, for use in the manufacture of women's and men's overcoats of heading Nos. 62.01 and 62.02; and
- (2) that all other tariff relief requested for fabrics covered by Request Nos. TR-95-010 and TR-95-034 not be granted.

Raynald Guay

Raynald Guay
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Desmond Hallissey

Desmond Hallissey
Member