



**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
LENROD INDUSTRIES LTD.
REGARDING
NONWOVEN FABRICS**

FEBRUARY 25, 1997

LENROD INDUSTRIES LTD.

REQUEST NO.: TR-95-066

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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, on February 13, 1996, a request from Lenrod Industries Ltd. (Lenrod) of Ville Saint-Laurent, Quebec, for the permanent removal of the customs duty on importations of certain nonwovens. The first fabric covered by the request consists of a needleloom web of synthetic staple fibres which has been subsequently thermally bonded (area bonded) on both sides. The synthetic fibres consist of 52 percent by weight of polypropylene staple fibres and 48 percent by weight of polyester staple fibres. It weighs 110 g/m². The second fabric consists of a needleloom web of synthetic staple fibres which has been subsequently thermally bonded on one side and thermally embossed (point bonded) on the other side. The synthetic fibres consist of 91 percent by weight of polypropylene staple fibres and 9 percent by weight of polyester staple fibres. It weighs 136 g/m².

To facilitate the administration of the requested tariff relief, if granted, the Department of National Revenue (Revenue Canada) suggested, and Lenrod accepted, the following description and tariff classification of the imported fabrics:

Nonwovens, consisting of polypropylene staple fibres mixed solely with polyester staple fibres, thermally bonded (area bonded) on one side and thermally bonded or thermally embossed (point bonded) on the other side, of tariff item 5603.93.90 [of Schedule I to the *Customs Tariff*³], for use in the manufacture of furniture, mattresses and mattress supports (box springs) [the subject fabrics].

On August 6, 1996, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation, which was widely distributed and published in the August 17, 1996, edition of the *Canada Gazette*, Part I.⁴

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. A letter was sent to 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, Lenrod and other interested parties, was provided to those interested parties that had filed notices of appearance in the investigation, thereby becoming "parties" to the proceedings.

A public hearing was not held for this investigation.

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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. R.S.C. 1985, c. 41 (3rd Supp.).
 4. Vol. 130, No. 33 at 2329.

PRODUCT INFORMATION

Currently, Lenrod imports the subject fabrics from Denmark and the United States. The fabrics are then converted, rewound and packaged by Lenrod to the specific requirements of the end users. In the furniture industry, the subject fabrics are used as decking⁵ and pull strips for medium- to high-end products. Bedding manufacturers use the subject fabrics for flanging and coil wrap in the higher-priced products and as box spring toppers for low- to medium-priced products.

In 1997, the subject fabrics are dutiable at 17.3 percent *ad valorem* under the MFN tariff and the GPT; at 2.4 percent *ad valorem* under the US tariff; and at 14.8 percent *ad valorem* under the Mexico tariff. The subject fabrics imported from the United States will enter duty free in 1998. However, the MFN tariff will only be reduced to 14.0 percent by the year 2004.

REPRESENTATIONS

Lenrod

Lenrod claims that there are no domestic producers of identical or substitutable fabrics. It states that the removal of the customs duty on imports of the subject fabrics would allow it to expand operations, hire more staff, purchase new machinery and compete more favourably on foreign markets as a result of considerably lower landed costs. Benefits would be passed on to Canadian manufacturers and consumers. According to Lenrod, the Canadian furniture and bedding industries would be able to compete more effectively with imports of the finished products that are imported at lower tariff rates than the raw material textiles. Lenrod also seeks tariff relief retroactive to September 1994.

Lenrod argued that needle-bonded nonwovens,⁶ spunbonded nonwovens⁷ and needle-punched thermal bonded nonwovens⁸ have different construction methods, costs and end uses. It submitted that the three fabrics sell at significantly different price levels, that they are not substitutes for each other and that they do not compete with each other in the marketplace. Lenrod stated that needle-bonded nonwovens lack the required strength and have an excessive elongation. It indicated that needle-punched thermal bonded nonwovens are sold at the high end of the market and command a significant price premium over the spunbonded nonwovens. In this connection, Lenrod pointed out that the evidence submitted by Simmons Canada Inc. (Simmons) and Palliser Furniture Ltd. (Palliser) clearly indicates the existence of two separate markets for the two fabrics and that there is no domestic production of identical or substitutable fabrics.

Lenrod also argued that Canadian users of the subject fabrics are disadvantaged vis-à-vis their US competitors, since US furniture and bedding companies can obtain lower-cost inputs by sourcing in the United States or by importing fabrics duty free. In addition, Lenrod submitted that tariff relief would enhance the competitive ability of the Canadian furniture industry in export markets.

5. Material used on the underside of removable cushions, chairs, love seats and sofas.

6. Barbed needles mechanically displace or entangle a web of fibres to produce a soft stretchy nonwoven structure.

7. A spunbonded fabric is made by the extrusion of filaments which are then laid down in the form of a web and subsequently bonded at cross-over points. According to Lenrod, the fabric is light and has a high tensile strength; the hand is normally stiff and boardy, and the surface tends to become fuzzy with abrasion.

8. Needles are punched through a web, thereby entangling fibres which are then bonded together using heat and pressure.

With respect to the argument that Canadian users can access US sources of the subject fabrics at fairly low duty rates, Lenrod submitted that to accept such reasoning is to acknowledge that Canadian MFN duty rates are in place to protect US manufacturers. Moreover, to force Canadian users to purchase the subject fabrics in the United States would: (1) confirm that US users of the subject fabrics have a geographic advantage over Canadian users that cannot obtain identical or substitutable fabrics in Canada; (2) eliminate the possibility of Canadian users overcoming the US advantage by sourcing the subject fabrics from other, perhaps more competitive, sources; and (3) restrict the Canadian users' ability to take advantage of currency differences to maintain their competitive position.

Although Lenrod acknowledged that the MFN duty, as a percentage of the cost of a finished product, is a relatively small amount, it submitted that looking at the global impact of a significant reduction in the cost burden on the users of the subject fabrics gives a better idea of the beneficial impact of tariff relief.

In sum, Lenrod submitted that the Tribunal can validly conclude that there is no established domestic source of identical or substitutable fabrics. Canadian users need tariff relief in order to sustain their competitive position vis-à-vis US competitors. Since the existing duty serves no purpose and inhibits the competitiveness of Canadian users, Lenrod submitted that tariff relief should be granted.

Users of the Subject Fabrics

Palliser, of Winnipeg, Manitoba, a manufacturer of upholstered furniture since 1969, uses the subject fabrics as decking in the production of sofas, chairs, love seats and sectional furniture. It claimed that there are no identical or substitutable fabrics available from domestic producers. Palliser supported the request because tariff relief would make the company more competitive vis-à-vis imports of furniture into the Canadian market. It argued that lower input costs would allow the company to further expand production facilities and increase export sales, resulting in more job creation and other benefits for the Canadian economy.

Simmons, of Mississauga, Ontario, indicated that it is a major purchaser of the subject fabrics which are used in the production of certain high-cost mattresses. It claimed that there are no domestic producers of identical or substitutable fabrics. Simmons fully supports Lenrod's request and stated that the removal of the tariff would reduce the cost of manufacturing mattresses using the subject fabrics.

Domestic Producers of Allegedly Identical or Substitutable Fabrics

Baker Textiles Inc. (Baker), of Montréal, Quebec, is a large supplier of fabrics to various industries, including the furniture industry. It employs over 40 people and sources its fabrics in Canada, as well as other parts of the world. Baker stated that Lenrod has a captive market for its embossed fabric, as it appears that Lenrod has an exclusive arrangement with its suppliers to the detriment of the furniture industry, which is unable to source embossed fabric elsewhere. Baker submitted that any tariff relief would give Lenrod an unwarranted competitive edge. Baker claimed that Lenrod's treatment (slitting, rerolling and repackaging) of the subject fabrics adds no economic value to the products.

Jasztex Fibers Inc. (Jasztex), a manufacturer of nonwovens located in Saint-Léonard, Quebec, employs over 100 people. Jasztex stated that it currently produces a nonwoven needlefelt fabric composed of 80 percent polypropylene and 20 percent other synthetic fibres and weighing from 80 to 135 g/m². Jasztex indicated that it markets this fabric to the furniture and bedding industries and plans to intensify its marketing

efforts for that fabric with the addition of various embossed patterns. In this connection, Jasztext pointed out that it has excess plant capacity and that its marketing department is producing sales literature for this product line. Jasztext submitted that it will be able to compete in the marketplace, provided the current tariffs remain in effect.

Matador Converters Co. Ltd. (Matador), of Montréal, employs over 100 people and operates two production facilities, one in Montréal and the other in Winnipeg. Matador stated that it has been producing needle-punched and bonded fabrics (chemically and thermal bonded) since 1945. It indicated that, in 1994, it adopted a three-year strategy to produce regular and embossed fabrics substitutable for the subject fabrics. In this connection, Matador stated that it has already made significant investments in plant equipment and intends to purchase additional machinery in 1997.

Matador argued that the removal of the customs duty on imports of the subject fabrics will have a serious negative impact on its future growth, capital expenditures, employment and export sales. Should the Tribunal recommend that the customs duty be removed, Matador requested that the tariff relief be granted for a period of 18 months only, in order to allow it sufficient time to demonstrate its capability to produce and sell identical or substitutable fabrics to the furniture and bedding industries. Moreover, it suggested that a recommendation be confined to fabrics weighing from 110 to 140 g/m².

Nolar Industries Limited (Nolar) is a converter of nonwovens, located in Concord, Ontario. In its submission, Nolar pointed out that it sells a substantial quantity of nonwovens to the furniture and bedding industries. Nolar stated that it performs the same conversion operations as Lenrod and competes for the same end-use applications. In this connection, Nolar indicated that it imports needle-punched fabrics in unconverted form from the United States and purchases primary nonwovens⁹ from Veratec Canada Inc. (Veratec) for conversion and sale in Canada. Nolar also pointed out that it produces spunbonded polypropylene decking using Veratec nonwovens which are further processed in the United States and returned for conversion. Nolar claimed that these three fabrics compete with the subject regular fabric.

Nolar also indicated that it has been working, since May 1996, to develop a new embossed fabric which will compete with the subject embossed fabric imported from Europe. In this respect, it stated that a needle-punched fabric, sourced in the United States, is to be converted at its own facilities, then embossed by a Canadian textile processor located in Markam, Ontario. This fabric, according to Nolar, would compete directly with the subject embossed fabric used for decking.

Finally, Nolar submitted that it has lost business in the past 18 months to low-priced imports from Italy. It argued that this has led to depressed prices in the market and that tariff relief on nonwovens from Europe would further aggravate the situation. Nolar, therefore, strongly opposed any reduction in the MFN tariff.

Nolar submitted samples to the Tribunal of its regular fabrics sold to the furniture and bedding industries and a sample of its embossed fabric which is being developed.

Nolar argued that its information indicates that there now appears to be substantial domestic production of nonwovens similar to the subject regular fabric. Nolar indicated that regular nonwovens seem to be abundantly available from the United States and that the *North American Free Trade Agreement*¹⁰

9. These fabrics are made in Canada from polymer (resin) by a spunbonding process.

10. Done at Ottawa, Ontario, on 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).

(NAFTA) rate will be nil in 15 months. Nolar, therefore, concluded that there would appear to be no case for tariff relief on the subject regular fabric and no reason to change the MFN tariff. In addition, Nolar argued that embossing can be done in Canada. It invited the Tribunal to consider the subject fabrics separately with a view to making separate recommendations, if necessary. Nolar submitted that nonwovens made of continuous filaments are similar to and compete in the marketplace with nonwovens based on staple fibres.

In response to Palliser's submission, Nolar argued that the Tribunal is dealing with two classes of subject fabrics, namely, regular and embossed nonwovens. Nolar submitted that Palliser's interest is limited to the subject embossed fabric since Palliser does not purchase regular fabric and uses MFN duty rates in arguing the benefits of tariff removal in a case where the subject regular fabric is clearly available from the United States at NAFTA rates approaching "free."

Nolar claimed that Palliser seems to be unaware of its product development work in the area of embossed fabric. Nolar indicated that a substantial number of non-subject fabrics are used for furniture decking and that these fabrics are competing with and are substitutes for the subject embossed fabric. Based on the information submitted by Palliser, Nolar argued that Palliser's use of embossed fabric in the production of upholstered furniture appears to be gaining in importance at the expense of other decking fabrics, thereby negating any argument that there are no substitutes for the subject embossed fabric. Should tariff relief be granted, Nolar argued that, in all likelihood, potential benefits would be limited to the foreign producer and Lenrod. If benefits flowed down to the user, Nolar submitted that these would be minimal. In addition, Nolar submitted that Palliser has exaggerated the prospective benefits of tariff relief with respect to the company's performance, including its export sales, and that Palliser has made important gains in the absence of tariff relief.

Texel Inc. (Texel), of Saint-Elzéar, Quebec, was formed in 1967 as a manufacturer of nonwovens and needle-punched fabrics. It currently employs over 200 people and markets its products in Canada, the United States, Europe and Asia. Texel pointed out that it has modern production facilities and technical expertise in the nonwoven field that have enabled it to manufacture a wide range of complex products. Since the signing of the *Canada-United States Free Trade Agreement*,¹¹ Texel indicated that it has invested more than \$5 million in new plant equipment. Texel stated that, in 1995, it opened a second plant in the United States and that, during the 1997-98 period, it intends to make further investments in its Canadian and US operations at a cost of about \$6 million.

Texel opposed the request for tariff relief because it argued that it has the technical knowledge and capability to produce identical or substitutable fabrics. Texel submitted that it presently produces fabrics similar to the subject fabrics, specifically nonwovens that are thermally bonded on both sides (regular pattern), and that, with an investment of \$30,000 to \$50,000 in machinery and a 3- to 4-month delay, it has the technical expertise to produce an embossed fabric. In this regard, Texel provided samples of the regular and embossed fabrics which it indicated were substitutable for the subject fabrics. Texel stated that these fabrics would be offered to all users at prices similar to those of the subject fabrics.

Other Submissions

Montreal Fabrics Corp. Ltd. (Montreal Fabrics), of Montréal, a long-time importer/distributor of fabrics for the furniture and bedding industries, opposed the request because it sells substitutable fabrics¹² and because the removal of the customs duty on the subject fabrics would have a negative impact on its

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

12. Montreal Fabrics supplies a fabric that is quilted by converters for use as decking.

operations, as well as the business of other converters. Montreal Fabrics claimed that importations of the subject fabrics have already resulted in lost sales and that other importer/distributors and converters have lost market share. It argued that tariff relief would further aggravate the situation. Since Lenrod's treatment of the subject fabrics only involves cutting and rewinding, Montreal Fabrics claimed that Canadian converters of substitutable fabrics create more employment.

Montreal Fabrics also stated that it purchases a spunbonded polypropylene fabric for the bedding industry and that, if the Tribunal recommends tariff relief, its fabric will not be competitive, resulting in lost market share. Montreal Fabrics indicated that the Tribunal should encourage competition among different suppliers and not provide a reward to a monopoly through tariff relief.

The **Department of Foreign Affairs and International Trade** informed the Tribunal that Canada does not maintain quantitative import restrictions on nonwovens classified under tariff item No. 5603.93.90.

Revenue Canada has indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief requested, should it be granted.

Lenrod's Response

Lenrod submitted that Nolar's representation with respect to Palliser's submission is argument and not evidence. According to Lenrod, this is confirmed by the inclusion, in Nolar's confidential response, of information to which Nolar did not have access. Lenrod also argued that there are no grounds for considering that Palliser's submission is limited to the subject embossed fabric.

In addition, Lenrod stated that the evidence in this case clearly demonstrates that there is no domestic production of identical or substitutable fabrics. Lenrod argued that Nolar's predictions on how sales growth will affect Palliser's purchases of an input is merely speculation based on nothing in the record. Lenrod added that, in the present case, the duties do not serve any useful purpose; rather, they impose an unnecessary cost on users and render Canadian industries less competitive vis-à-vis their US competitors. Also, Lenrod argued that a company benefiting from tariff relief is under no obligation to pass the cost savings on to individual items of furniture. Lenrod submitted that a firm may choose: (1) to focus the savings on specific items only; (2) to use the tariff relief to reduce its financing costs, thereby becoming more competitive overall; or (3) to invest in equipment or systems that will improve efficiency.

Lenrod submitted that Nolar is a converter, not a manufacturer of fabrics. In this connection, Lenrod stated that Nolar did not indicate to what extent it converts nonwovens produced by Veratec as opposed to converting imported fabrics from the United States which are substitutable for and compete with the subject fabrics for sale in Canada. According to Lenrod, the fact that Nolar imports certain needle-punched fabrics lends support to its claim that identical or substitutable fabrics are not produced in Canada. Also, Lenrod emphasized that the availability of supplies of the subject fabrics in the United States is not grounds for denying tariff relief. On the contrary, Lenrod argued that it would be in the interest of Canadian manufacturers to ensure duty-free access to all sources of raw materials. In addition, Lenrod argued that limiting the access of Canadian manufacturers to duty-free raw materials from the United States would acknowledge that US users have a significant geographical advantage over the Canadian furniture and bedding industries in obtaining inputs.

With respect to the primary nonwovens produced by Veratec, Lenrod pointed out that these are spunbonded fabrics rather than needle-punched thermal bonded nonwovens and that the majority of Veratec's customers are in the diaper business. Also, Lenrod indicated that the spunbonded fabrics are

50 percent less expensive than the thermal bonded or needle-punched thermal bonded nonwovens, which indicates that the two fabric types are not competing for the same end uses. Lenrod claimed that this also applies to the spunbonded polypropylene decking made from Veratec's nonwoven, which is further processed in the United States and returned for conversion. In this context, Lenrod pointed out that Veratec has not shown any interest in this investigation.

Lenrod also argued that Nolar's statement to the effect that it has been working since May 1996 to develop a new embossed fabric is not, in itself, grounds for denying tariff relief. In this connection, Lenrod argued that the Tribunal has frequently indicated in previous tariff relief cases that the mere intention to commence production at some time in the future is not to be considered grounds for denying tariff relief. Moreover, Lenrod submitted that Nolar has given no details concerning the development of the embossed fabric, the timing of its introduction into the marketplace, its end uses or its selling price. Finally, with respect to the issue of the effects of low-priced imports from southern Europe, Lenrod indicated that the subject embossed fabric is produced by Fibertex Non-Woven, of Denmark, which is located in northern Europe, not southern Europe, thereby confirming that Veratec fabrics bear no relationship to the subject fabrics.

In response to Simmons' submission, Lenrod indicated that its evidence confirms that the price of needle-punched thermal bonded nonwovens is such that they are used only in the manufacture of high-quality, high-priced furniture and bedding and do not compete with the spunbonded or needle-punched fabrics.

Regarding Baker's submission, Lenrod argued that Baker's representation confirms that market participants are well aware that there are no Canadian substitutable fabrics. According to Lenrod, the fact that it may have an exclusive arrangement with a foreign supplier does not, in any way, weaken its request for tariff relief. Lenrod was of the view that Baker opposes the request for tariff relief because it cannot purchase from Lenrod's exclusive source. Lenrod also pointed out that its activities are essential in ensuring that the subject fabrics meet the requirements of users. Finally, Lenrod submitted that Baker has no standing in this investigation, since the company is merely a warehouse operation.

In reply to Jasztex's submission, Lenrod submitted that Jasztex failed to respond to the Tribunal's questionnaire, did not provide any production and sales information with respect to its allegedly substitutable fabrics and did not submit any samples of these fabrics. In addition, Lenrod argued that nonwoven needlefelt fabrics are not substitutable for and do not compete with needle-punched thermal bonded nonwovens.

With respect to Matador's submission, Lenrod indicated that, since Matador agreed to tariff relief for an 18-month period, this is clear evidence that Matador is not, at present, in a position to produce identical or substitutable fabrics. Moreover, Lenrod pointed out that Matador failed to respond to the Tribunal's questionnaire and did not provide any details on its Canadian operations.

In regard to Texel's submission, Lenrod argued that, although the two samples (regular and embossed) submitted by Texel appear to be substitutable fabrics, Texel has not demonstrated, or even claimed, that it has ever produced identical or substitutable fabrics in the past or has the intention of producing identical or substitutable fabrics in commercial quantities in the future. Lenrod argued that, at most, Texel's submission of two samples of fabrics is a demonstration that it is capable of producing needle-punched thermal bonded fabrics and nothing more. Lenrod submitted that Texel has no apparent history of participation in the furniture and bedding industries and that its own marketing orientation is clearly aimed at other industry sectors.

Lenrod pointed out that the Tribunal knows nothing about Texel's production, either actual or proposed. Lenrod also indicated that, in the early 1990s, it worked closely with Texel to develop a regular fabric, but that this joint venture was abandoned when it became clear that Texel did not have the technical capabilities to produce identical or substitutable fabrics that were acceptable to users, notably Simmons.

Based on the information that has been submitted to date, Lenrod argued that the Tribunal should reject Texel's claim that it produces identical or substitutable fabrics. In this connection, Lenrod indicated that Texel failed to respond to the Tribunal's questionnaire and that, therefore, the Tribunal has no information on actual or potential costs, prices, volumes, capacity, quality, customers or marketing efforts with respect to identical or substitutable fabrics. Lenrod submitted that Texel's fabrics may be technically unacceptable or otherwise unsuitable for the user industries.

Concerning Montreal Fabrics' submission, Lenrod argued that quilted decking and needle-punched thermal bonded decking do not compete with and are not substitutable for one another. In this connection, Lenrod explained that Canadian furniture manufacturers have moved away from quilted decking for reasons related to consumer demand, fashion and product versatility. Lenrod also pointed out that Montreal Fabrics failed to respond to the Tribunal's questionnaire, did not provide any production information with respect to its allegedly substitutable fabrics and did not submit any samples of these fabrics. In addition, Lenrod argued that spunbonded fabrics, used by the bedding industry to manufacture box springs, are not substitutable for and do not compete with thermal bonded fabrics. Finally, Lenrod submitted that Montreal Fabrics' representations confirmed rather than contradicted the fact that there is no production of identical or substitutable fabrics in Canada.

ANALYSIS

The Minister's terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff and, in doing so, to take into account all relevant factors, including the substitutability of imported textile inputs for domestic textile inputs and the ability of domestic producers to serve the Canadian downstream industries.

According to Lenrod, Palliser and Simmons, there is no domestic production of fabrics identical to or substitutable for the subject fabrics. This position was contested by potential producers of fabrics identical to or substitutable for the subject fabrics, namely, Jasztext, Matador, Nolar and Texel.

In essence, Jasztext argued that it produces a nonwoven needlefelt fabric which it markets to the furniture and bedding industries. It stated that it also plans to add an embossed fabric to its product line. Matador submitted that it has been producing needle-punched and bonded fabrics (chemically and thermal bonded) since 1945. It indicated that, in 1994, it adopted a three-year strategy to produce regular and embossed fabrics substitutable for the subject fabrics. In this connection, Matador stated that it has already made significant investments in plant equipment and intends to purchase additional machinery in 1997. Nolar argued that it purchases primary nonwovens from Veratec for conversion and sale in Canada and that it also produces spunbonded polypropylene decking using Veratec nonwovens. Nolar claimed that these fabrics compete with the subject regular fabric. In addition, Nolar stated that it has been working, since May 1996, to develop a new embossed fabric which will compete with the subject embossed fabric imported from Europe. Finally, Texel submitted that it presently produces identical or substitutable fabrics, specifically a regular fabric, and that, with additional investment and a 3- to 4-month delay, it has the technical expertise to produce an embossed fabric.

The Tribunal notes that the evidence of the parties opposing tariff relief indicates different capabilities to produce regular and embossed fabrics substitutable for the subject fabrics. With respect to the regular fabric, the evidence suggests to the Tribunal that there may be domestic fabrics that compete with the subject regular fabric imported from the United States. However, domestic producers of allegedly substitutable fabrics did not provide any production and sales information that would demonstrate their ability to serve the needs of the furniture and bedding industries. Turning to the embossed fabric, producers, in general, submitted that the fabric was in various stages of development and that, with additional time, they would be in a position to compete with imports from Europe. As with the regular fabric, however, little quantitative information was provided to support their claim.

Based on the evidence, the Tribunal recognizes that the circumstances in this investigation are somewhat unique, in that domestic producers seem to be capable of producing competitively priced fabrics that would be substitutable for the subject fabrics, but failed to provide sufficient information that would assist the Tribunal in its deliberations. Notwithstanding the limited information available, the Tribunal notes that Nolar and Texel provided samples of allegedly substitutable fabrics. Although Lenrod did not comment on Nolar's samples, it did examine the samples provided by Texel. In this regard, Lenrod stated that the two samples submitted by Texel appear to be substitutable fabrics. In addition, the Tribunal notes that Texel, in its submission, indicated that its fabrics would be offered to all users at prices similar to those of the subject fabrics. The Tribunal finds it difficult to detect substantial differences between the subject fabrics and the allegedly substitutable fabrics provided by Texel. Furthermore, the Tribunal cannot ignore the efforts and commitment made by Texel to produce samples which appear acceptable and is concerned that, if tariffs on the subject fabrics were removed, it may forestall all developments and cause Texel, as well as other producers, to waste the substantial investments made to produce identical or substitutable fabrics.

The Tribunal also notes that, in the early 1990s, Lenrod worked closely with Texel to develop a regular fabric, but that this joint venture was abandoned when it became clear to Lenrod that Texel did not have the technical capabilities to produce identical or substitutable fabrics that were acceptable to users. However, Texel now appears to have the technical knowledge to produce fabrics that would be substitutable for the subject fabrics. With additional investment in equipment, the Tribunal believes that Texel could soon be in a position to produce the embossed fabric.

One of Lenrod's main reasons for requesting tariff relief is to provide Canadian furniture and bedding manufacturers the opportunity to reduce their costs, which, in turn, would help them compete more effectively with imports of the finished products. In this regard, the Tribunal notes that there are no duties on imports of furniture from the United States and that duties payable on imports of mattresses and mattress supports from the United States will be removed completely on January 1, 1998. Furthermore, US manufacturers have access to lower fabric costs, in part as a result of lower duties on imports of the subject fabrics into the United States.¹³ The Tribunal, therefore, agrees with Lenrod that having access to lower input costs would be of benefit to these Canadian industries. The Tribunal believes that Texel, and possibly other domestic producers, are or will shortly be in a position to offer competitively priced fabrics to the Canadian furniture and bedding industries. Moreover, as a result of NAFTA, users will also be able to import the subject regular fabric from the United States duty free as of January 1, 1998.

13. As of January 1, 1997, the US MFN duty rate for the subject fabrics is 5.0 percent and will decline to free in 1999. On the other hand, the Canadian MFN duty rate for the subject fabrics is now 17.3 percent and will decline to 14.0 percent by the year 2004.

Under the present circumstances, the Tribunal must be concerned with the ability of the furniture and bedding industries to have established and competitive sources of the subject fabrics or any substitutable fabrics in order to sustain their competitive position vis-à-vis imports of the finished products. Although domestic producers of allegedly substitutable fabrics, notably Texel, seem to have the ability to respond to the needs of users, failure to do so would, in the Tribunal's view, prejudice the position of the furniture and bedding industries in the market. The Tribunal is of the view that, if domestic producers do not demonstrate their capability to produce and sell identical or substitutable fabrics to these industries at competitive prices in a reasonable time period, say, 12 months, then it would be open to Lenrod to file a new request with the Tribunal.

In conclusion, in light of the evidence, the Tribunal finds that, at this time, the cost of granting tariff relief would outweigh any benefits to Lenrod and other users of the subject fabrics.

RECOMMENDATION

In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief not be granted at this time on importations of nonwovens, consisting of polypropylene staple fibres mixed solely with polyester staple fibres, thermally bonded (area bonded) on one side and thermally bonded or thermally embossed (point bonded) on the other side, of tariff item No. 5603.93.90, for use in the manufacture of furniture, mattresses and mattress supports (box springs).

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