

**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
CAMBRIDGE INDUSTRIES  
REGARDING  
NETTING**

**FEBRUARY 12, 1999**

**CAMBRIDGE INDUSTRIES**

**REQUEST NO.: TR-98-001**

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## **INTRODUCTION**

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference<sup>1</sup> from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.<sup>2</sup> The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

Pursuant to the Minister's reference, the Tribunal received, on June 26, 1998, a request from Cambridge Industries (Cambridge) of Toronto, Ontario, for the removal, for an indeterminate period of time, of the customs duty on importations from all countries, of knotted netting, open square mesh, of tubular braided twine consisting of man-made (polyethylene) filaments, of subheading No. 5608.19 of the schedule to the *Customs Tariff*,<sup>3</sup> for use in the manufacture of tennis nets (the subject netting). On October 15, 1998, 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 October 24, 1998, edition of the *Canada Gazette*, Part I.<sup>4</sup> By letter dated November 4, 1998, Cambridge asked for "full and retroactive duty relief from April 1997 forward."

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of netting identical to or substitutable for the subject netting. A request for information was also sent to a potential importer of the subject netting. A letter was sent to the Department of National Revenue (Revenue Canada) requesting information on the tariff classification of the subject netting, and a sample was 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, Cambridge 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. Following distribution of the staff investigation report, only Cambridge filed a submission with the Tribunal.

A public hearing was not held for this investigation.

## **PRODUCT INFORMATION**

The subject netting, imported from Portugal and the Republic of Korea, is used in the manufacture of tennis nets. The production process consists of sewing banding material onto the net bodies, cutting the nets, installing cables, affixing grommets, attaching raps<sup>5</sup> at each end of the head band and then inserting end sticks. All phases of production are performed in Cambridge's facilities.

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1. On March 20 and July 24, 1996, and on November 26, 1997, 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. 132, No. 43 at 2932.
  5. The raps are white nylon cords that are attached at each end of the head band. Upon installation of a tennis net, the raps are attached to the posts so that the net remains taut at the top.

As of January 1, 1999, the subject netting, classified for customs purposes under classification No. 5608.19.90.29, is dutiable at 19.0 percent *ad valorem* under the MFN tariff and at 10.0 percent *ad valorem* under the Mexico tariff and the Chile tariff and is duty free under the US tariff and the Canada-Israel Agreement tariff. The MFN tariff for this netting is still subject to yearly reductions and will be 14.0 percent *ad valorem* by 2004.

## **REPRESENTATIONS**

### **Users of the Subject Netting**

#### Cambridge

Cambridge is privately owned and employs five people, three of whom are involved in the direct production of tennis nets. The company started manufacturing tennis nets on a large scale in the summer of 1997.

In its submissions to the Tribunal, Cambridge alleged that identical or substitutable netting is not available in Canada. In this connection, Cambridge indicated that ABC Netting Inc. (ABC), IMP Group Ltd. (IMP) and Warp Tech Inc. (Warp Tech) neither produce knotted netting nor are they in the tennis net business. Cambridge pointed out that ABC has little or no experience in the tennis industry and that its main focus is on other sports. As for IMP, Cambridge stated that it had contacted this company, but that the latter was unable to satisfy its requirements. With respect to Warp Tech, Cambridge indicated that it would be willing to explore opportunities, should Warp Tech decide to enter this market.

On the question of product quality, Cambridge submitted that two attempts at producing knotless tennis nets over the last 42 years had failed because such nets are not able to withstand the rigours of the sport and are not acceptable for play on the international level. In this regard, Cambridge noted that Seaway Plastics Ltd. (Seaway) acknowledged that knotless netting is unacceptable for tennis nets.

Cambridge submitted that the existing tariff results in higher costs because modifications to the duty drawback program<sup>6</sup> have created a significant surcharge on its net prices. According to Cambridge, this was not factored into its business plan. Since 90 to 95 percent of its tennis nets are exported to the United States, Cambridge alleged that it is being priced out of the market. Cambridge argued that the higher cost of inputs is threatening the firm's viability. Cambridge stated that, should tariff relief not be granted, it may have to shut down its Canadian operation and re-locate to the United States. Such action would result in net economic losses to Canada.

Cambridge also requested that the tariff relief be retroactive to April 1, 1997. Cambridge submitted that it is a young and small company, primarily involved in piecework and operating on very narrow margins. In this connection, Cambridge argued that the 20.5<sup>7</sup> percent rate of duty on imports of the subject netting has resulted in high production costs and zero profitability, thereby seriously threatening the vitality and survival

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6. Under NAFTA, effective January 1, 1996, a duty refund system called "the lesser-of concept" replaced the drawback regulations for Canada-United States trade. Under this new concept, the refund is equal to one of the following amounts, whichever is less:

- (a) the duties paid on the goods imported into Canada; or
- (b) the duties paid on the finished goods when exported to the United States.

7. As of January 1, 1999, the new MFN rate of duty is 19.0 percent *ad valorem*.

of its company. It stated that the payment of duties created a difficult situation in terms of working capital during the first full year of operation. Cambridge indicated that, unlike large established firms, it cannot absorb the effects of the high import duties which make it no longer worthwhile for it to produce in Canada. In addition, Cambridge indicated that, should tariff relief not be granted, it will not be able to take delivery of the next container shipment of the subject netting from Portugal, expected in the first quarter of 1999. However, Cambridge submitted that it has the potential to increase sales significantly and employ 15 to 20 people on a regular basis.

#### Seaway

Seaway, of Lachine, Quebec, commenced the production of sports nets (for badminton, handball, soccer and volleyball) in 1971. Seaway indicated that all domestic netting is knotless and is not considered traditional and acceptable in some instances. It also imports tennis nets. Seaway stated that it has the capability of manufacturing complete knotless tennis nets, but that it currently only manufactures custom sizes because it cannot compete with fully manufactured imported standard size nets. Seaway supported Cambridge's request for tariff relief.

### **Domestic Producers of Allegedly Identical or Substitutable Netting**

#### ABC

ABC, of Mississauga, Ontario, was established in 1996,<sup>8</sup> and produces only knotless netting,<sup>9</sup> mostly made from nylon, polypropylene and polyester, for sports (volleyball, golf, baseball, soccer and hockey), aquaculture and industrial end uses. ABC pointed out that, because of the loss of previous auto business (\$2 million per year) to Mexico in 1997, the company has concentrated on expanding its production and sales of sports netting.

ABC opposed the request for tariff relief because it submitted that any relief provided to importers of the subject netting would have a prejudicial effect on the company's efforts to remain competitive and expand its sports net business in other areas. Although ABC produces only knotless netting, it stated that this type of netting competes directly with knotted netting in the sports net business. ABC indicated that it would not be an onerous process to set up equipment for the production of knotless tennis nets and that this could be done with minimal investment and within a three-week period. ABC also pointed out that, with netting for sports applications, particularly tennis netting, the strength and other characteristics of knotless netting are perfectly acceptable and that it is cheaper and easier to repair knotless netting.

#### IMP

IMP, of Dartmouth, Nova Scotia, has been manufacturing commercial fishing netting made of polyethylene and nylon filaments for over 20 years.

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8. The knotless netting and industrial fabric business was formerly operated by Hafner Inc., of Granby, Quebec.

9. Knotless netting "on the diamond" is generally used in the commercial fishing industry and in sports, such as hockey, soccer and volleyball. The netting for high-quality tennis nets is knotted "on the square."

IMP opposed the request for tariff relief because it has not been given the opportunity to supply a competitive product. IMP stated that, in the past, it has not produced tennis netting, but that it has made shrimp netting of the same size specifications. IMP indicated that it would only have to procure the polyethylene twine (delivery time of two to three months) as per Cambridge's specifications and that it could produce the netting with existing equipment. With the required twine in stock, however, IMP pointed out that the lead time required to fill an order would be short. According to IMP, tennis netting would help the company to diversify its production, since it has only relied on the commercial fishing sector for its survival. IMP stated that its pricing would be competitive with the price of the subject netting and that, if it were not, it would not oppose the request for tariff relief. IMP indicated that it intends to determine whether it can meet Cambridge's requirements.

### Warp Tech

Warp Tech, of Yarmouth, Nova Scotia, commenced production of knotless netting for the aquaculture industry in May 1998. While it does not currently produce knotted netting, Warp Tech indicated that, within two years, it intends to acquire, at an expected cost of \$50,000, the equipment necessary to manufacture tennis netting. Consequently, Warp Tech stated that tariff relief should only be granted for a two-year period and that the situation should be re-evaluated after this period.

### OTHER INFORMATION

The Department of Foreign Affairs and International Trade informed the Tribunal that Canada does not maintain quota restraints on the subject netting. This product, therefore, is not subject to any quantitative import restrictions.

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

### 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.

This request covers a specific type of netting used in the production of tennis nets, namely, knotted netting, open square mesh. The evidence reveals that this type of netting is not produced in Canada. The three companies that have opposed the request for tariff relief are involved in the manufacture of netting for other sports, aquaculture or commercial fishing. ABC indicated that it would not be an onerous process to set up equipment for the production of knotless tennis netting and that this could be done with minimal investment and within a three-week period. IMP stated that, with the polyethylene twine in stock, it could produce identical or substitutable netting with existing equipment. Warp Tech indicated that tariff relief should only be granted for a two-year period because it intends to acquire the necessary equipment at a cost of \$50,000 and to manufacture identical or substitutable netting.

Although these companies indicated that they have different capabilities to produce tennis netting, the Tribunal is not persuaded by their arguments. The evidence on the record indicates that Cambridge uses very high-quality knotted netting in the production of tennis nets. This, in turn, has solidified Cambridge's

reputation in the marketplace, especially in the United States, as a reliable supplier with a superior product. Based on the evidence, the Tribunal is concerned that domestic producers of netting, at least in the foreseeable future, will not be in a position to supply Cambridge with the high-quality netting that it needs to maintain and increase sales. In this connection, the Tribunal notes that domestic producers of netting did not provide production and sales information that would assist the Tribunal in its deliberations and demonstrate their ability to serve the needs of Cambridge. In a number of cases,<sup>10</sup> the Tribunal has indicated that the onus rests squarely with domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable products.

As for the possibility of using knotless netting in the production of high-quality tennis nets, the evidence indicated that, over the last 42 years, two attempts at producing knotless tennis nets have failed because such nets are not able to withstand the rigours of the sport and are not acceptable for play on the international stage. On this point, the Tribunal notes that Seaway, which supported Cambridge's request, indicated that knotless netting is not always considered acceptable. The Tribunal, therefore, is not persuaded that the strength and other characteristics of domestically produced knotless netting are suitable for the production of high-quality tennis nets by Cambridge, such that knotless netting could be considered substitutable for the imported knotted netting. If Cambridge were to use such netting, the Tribunal is of the opinion that the company's reputation as a reliable supplier with a superior product could be adversely affected and that, eventually, the company's overall operations could be put at risk.

On the basis of the information available to the Tribunal, granting tariff relief would result in yearly benefits to Cambridge in excess of \$20,000. In addition, tariff relief would provide substantial benefits to Cambridge in the form of reduced costs, thereby enhancing its competitive position in the market, especially in the United States.

In summary, the Tribunal finds that the tariff relief requested by Cambridge would provide net economic gains to Canada.

With respect to the request for retroactive tariff relief to April 1, 1997, the Tribunal has previously stated that it will not consider recommending such relief other than in the most exceptional circumstances.<sup>11</sup> Cambridge submitted that retroactive relief is necessary because it is a young company and that the requirement to pay the duties on the imported tennis netting has seriously threatened the vitality and survival of the company. The Tribunal is not persuaded that these circumstances constitute exceptional circumstances that would warrant a recommendation of retroactive relief.

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10. See, for example, *Report to the Minister of Finance: Request for Tariff Relief by Camp Mate Limited Regarding Certain Woven Fabrics of Non-textured Nylon Filament Yarns*, Canadian International Trade Tribunal, Request No. TR-95-051, June 10, 1996; and *Report to the Minister of Finance: Requests for Tariff Relief by Lady Americana Sleep Products Inc. and El Ran Furniture Ltd. Regarding Certain Stitch-Bonded Warp-Knit Fabrics*, Canadian International Trade Tribunal, Request Nos. TR-95-064 and TR-95-065, February 12, 1997.

11. See, for example, *Report to the Minister of Finance: Request for Tariff Relief by Alpine Joe Sportswear Ltd. Regarding Certain 4-thread Twill Fabrics*, Request No. TR-96-006, March 27, 1997, at 3.

**RECOMMENDATION**

In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries, of knotted netting, open square mesh, of tubular braided twine consisting of man-made (polyethylene) filaments, of subheading No. 5608.19, for use in the manufacture of tennis nets.

Pierre Gosselin

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Presiding Member

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