



## ANALYSIS

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1962, No. 2

**An Act to authorise the acquisition by the Crown of shares in Commonwealth Fabric Corporation Limited, and to provide for matters incidental thereto** [30 August 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Commonwealth Fabric Corporation Act 1962.

(2) This Act shall be deemed to have come into force on the thirteenth day of January, nineteen hundred and sixty-two.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“The agreement for mutual rescission” means the agreement dated the thirteenth day of January, nineteen hundred and sixty-two, entered into by the Minister of Industries and Commerce on behalf of the Government of New Zealand with Smith and Nephew Associated Companies Limited and Commonwealth Fabric Corporation Limited, a copy of which is set out in the Second Schedule to this Act:

“The company” means the Commonwealth Fabric Corporation Limited.

(2) Copies of the letters constituting the agreement referred to in clause 1 of the agreement for mutual rescission are set out in the First Schedule to this Act.

**3. Payment of compensation and other money under agreement**—All money from time to time required to be paid by the Government of New Zealand under or pursuant to the agreement for mutual rescission may be paid out of the Consolidated Fund, without further appropriation than this section.

**4. Minister may acquire shares in company**—(1) The Minister of Finance may from time to time, on behalf of Her Majesty the Queen, acquire shares in the company.

(2) The Minister of Finance may from time to time, on behalf of Her Majesty the Queen,—

(a) Advance money to the company; and

(b) Give in respect of any advances made to the company by any other person any guarantee, indemnity, or security,—

upon or subject to such terms and conditions as the Minister thinks fit.

(3) The Minister of Finance may from time to time, on behalf of Her Majesty the Queen, enter into agreements with any person or with the company for the purpose of giving full effect to this section.

(4) All money required to be paid under this section may without further appropriation than this section, be paid out of the Consolidated Fund.

**5. Accounts of company**—(1) Notwithstanding anything in the Companies Act 1955, the accounts of the company shall be kept in such form as the Minister of Finance approves, and shall be audited by the Audit Office, which for that purpose shall have and may exercise all such powers as it has under the Public Revenues Act 1953 in respect of public money and public stores and the audit of local authorities' accounts.

(2) Nothing in sections 151 to 153 or in sections 163 to 166 of the Companies Act 1955 shall apply with respect to the company.

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## SCHEDULES

### FIRST SCHEDULE

#### COPIES OF LETTERS CONSTITUTING AGREEMENT

Office of the Minister of Industries  
and Commerce

Wellington

12th August, 1960.

Mr G. Whittaker,  
Deputy Chairman,  
Smith & Nephew Associated  
Companies Limited,  
c/o Hotel Waterloo,  
Waterloo Quay,  
WELLINGTON, C.1.

Dear Sir,

The Department of Industries and Commerce has reported to me on the progress of the negotiations with your company and I am now glad to set out the Government's understanding of the position reached.

In January 1960 your company, in association with another company, submitted a proposal for a cotton spinning and weaving industry and after discussions with the Government it was proposed, subject to final confirmation by the boards of directors of the companies, that a mill with a comprehensive range of products manufactured in depth and with an ultimate capital of £4 million should be established in Nelson. Subsequently, your associate company decided not to proceed and in June of this year your company submitted its own separate scheme for a mill which, as originally proposed by the company would be located in Nelson. Further discussions between your company and the Department have now clarified the present scope of the scheme, and this letter will therefore be the basis of the agreement on which your company will proceed to establish and operate the industry.

The Government welcomes the company's initiative in the setting up of this industry. The Government will give every reasonable encouragement and assistance to your company in carrying out its plans.

The understandings reached between the company and the Department set out below are confirmed by the Government.

#### *The Industry:*

The company will take steps immediately to establish at Nelson a cotton industry with a substantial range of products and will proceed to extend the range and depth of production as appropriate and in consultation with the Government. The company will install new plant of

FIRST SCHEDULE—*continued*

the most modern type available in the world and in the first stage of production will employ a staff of about 150 persons (including some skilled workers from overseas) comprising approximately one-third female and two-thirds male employees.

*Capital:*

The company will immediately establish a New Zealand company for the purpose of setting up and operating the industry, with an authorised capital of £5 million. (Hereinafter in this letter I shall refer to the proposed New Zealand company as "the company"). The first stage of operations to be carried out by the company will involve finance to the extent of £1 million, and the capital will be increased by the company as production expands in range and depth in consultation with the Government. It is understood that for the first few years of operation no profits from the venture are expected by the company and that therefore the company will not initially call upon New Zealand equity capital. Subsequently the company will provide the opportunity for New Zealand investors to subscribe for shares ranking with other ordinary shares for dividends, to the extent of 33 $\frac{1}{3}$  per cent of the total equity capital of the company, provided that, if in reasonable circumstances the company is unable to raise any or all of this proportion from New Zealand sources, the Government will agree to the company's looking to other sources to the extent of the deficiency. As far as possible the Government will co-operate with the company in its efforts to raise the required New Zealand capital.

*Production Range and Programme:*

In 1961 the company will commence production so that by the beginning of 1964 it should be in full production of the first stage of its output, namely meat wraps (up to one-third New Zealand's market requirements); Denims; cotton wool; surgical dressings; winceyettes; and diaper cloth, to a total annual factory sales value assessed at present prices of approximately £1 $\frac{1}{4}$  million.

Note is taken that there will be variation from product to product in the depth of processing in the first stage and the estimated cost of imported raw materials in the first stage will be approximately £575,000 a year. Note is also taken of the intention of the company to extend as soon as possible its production in depth into the following range of additional products: flannelettes; sheeting and pillow-casing; swansdown; shirtings; drills; towelling, all types; canvas and duck; cotton-type furnishing fabrics; tickings; knitting yarns; non-woven fabrics (other than knitted fabrics not specified in this paragraph; cotton mixture (excluding wool); cellular blankets; and deep pile fabrics (not being carpets), it being understood that these products (with the exception of cotton wool, deep-pile fabric and non-woven fabric) would be the result of processing cotton or other staple up to and including 1 $\frac{3}{4}$  inches in length and of using cotton and waste spinning and weaving types of machinery.

In its expansion programme the company will endeavour as soon as possible to expand simultaneously in range and in depth, but it is understood that if at any time the company's resources are limited it may be obliged to choose between expansion in range and in depth.

FIRST SCHEDULE—*continued*

Where this is under consideration it will be a matter for negotiation between the Government and the company as to which alternative course of development is followed. In any event the company will keep in consultation with the Government on all stages of its programme.

*Quality:*

The products to be manufactured at the initial stage and at all stages of the programme will be of a quality at least equal to that of products manufactured by Smith and Nephew Associated Companies Limited in the United Kingdom and to that of products currently marketed in New Zealand. The company's products will comply with any New Zealand standard specifications that may be applicable.

*Prices:*

The company will endeavour to sell and continue to sell all of its products disposed of in New Zealand at prices not higher than the prices of like imported products.

To this end, the price (c. and f. all substantial New Zealand distribution centres) of each and every product produced by the company for sale in New Zealand will not exceed the prevailing fair average price in such centres for similar products at the time of the company's firm commitment (as signified by specific financial commitment and the setting of a commencing date of manufacture) to manufacture such products, increased or reduced thereafter by variations in direct costs of production and variations in taxation fairly apportionable, in accordance with recognised sound accountancy practice, to the price of each such product.

Notwithstanding the obligation of the company to continue indefinitely to thus set maximum prices for its products, the price (c. and f. all substantial New Zealand distribution centres) of meat wraps will not exceed the fair average price of imported meat wraps of like qualities in such centres at the time of such sales of such meat wraps.

*Assurance of the Market:*

Throughout the first stage of the company's operations, that is until 1964, the company will, by import licensing practice, for as long as it carries out its obligations as set out in this document, be enabled to dispose of all of its production, disposable in New Zealand, up to a maximum in the case of any one product other than meat wraps of 80 per cent of the New Zealand market for that product. In the case of meat wraps, the maximum part of the New Zealand market to be thus assured will be 33 $\frac{1}{3}$  per cent.

Thereafter for a further period of at least five years the company will be assured, by the same means, and on the same conditions, of a market for all extensions of its production (manufactured pursuant to agreement with the New Zealand Government) disposable in New Zealand.

Moreover, excluding only meat wraps, as soon as the company is manufacturing any product and supplying a reasonable share of the New Zealand market therewith, an appropriate protective tariff will

**FIRST SCHEDULE—continued**

by the relevant procedure be established, notwithstanding that assurance of market by way of import licensing is at the time being provided. Commencing in 1969 and continuing indefinitely, the company while it continues to observe its undertakings as set out in this document or as varied by agreement with the Government, will by import licensing or protective tariff or a combination of both, continue to be provided with a reasonable assurance of a New Zealand market.

***Further Development:***

Bearing in mind the company's intention to progress as soon as possible in depth and in range, and particularly into the manufacture of the products specified on Page 2 of this letter, the New Zealand Government will accord to the company the opportunity to submit a scheme or schemes on its own initiative for such further development. If at any time by the initiative of the Government, or of any third party, further development of the industry is proposed in respect of the specified products, the Government will give the company the opportunity of submitting a proposal or proposals thereon. Provided these proposals are acceptable to the Government and are reasonably as acceptable as any other desirable proposal or proposals received, the Government will give the company first opportunity to carry out its proposal or proposals, and if the company does carry out such proposal or proposals, the requisite plant and raw material import licences will be made available exclusively to the company or to any approved associate of the company, unless the company agrees to a relaxation of this undertaking.

The company will not enter the field of production of existing New Zealand manufacturers without the approval of the Government, provided that the company may enter into production of sanitary towels on the understanding that existing domestic manufacturers will have access to raw materials at no less favourable prices and terms than those available to the company and at comparable quality to their present supplies. Alternatively, such manufacturers may be permitted to import their raw material requirements. It would be preferable for the company, if it is to enter the sanitary towel manufacturing field, to do so in association with one of the existing domestic manufacturers.

The Government is interested in the suggestion that a series of vertical units might be established by the company in association with other companies. Although the Government would need to appraise each proposal in detail before indicating its attitude, you may be assured of the goodwill of the Government in giving consideration to such proposals.

In the event of the development or expansion, at present unforeseen, of new processes or products related to those to be undertaken by the company, the Government will give sympathetic consideration to any proposals by the company to enter these fields if this be necessary to safeguard the company's capital investment.

***Customs duty on Plant and Materials:***

If the company requires plant or machinery which is essential to the operation of the industry and which is to be imported from a source which is ineligible for British Preferential Tariff treatment, the Minister of Customs will undertake to consider sympathetically an application by

FIRST SCHEDULE—*continued*

the company for remission or reduction of duty if the machinery, being machinery of the specified kind, is not economically available from a country eligible for British Preferential Tariff treatment.

Subject to New Zealand's international obligations any applications for duty-free entry of raw materials not available from New Zealand sources, yarns (excluding yarns deemed to be competitive with woollen yarns) and cotton cloth in the grey, which are required by the company for processing in New Zealand, will be sympathetically dealt with by the Government.

*Imports based on New Zealand Fabric:*

The company intends to export woven fabric to its associate and other companies in Australia for the manufacture in Australia of surgical dressings. In this event, imports by the company of surgical dressings made from New Zealand fabric will be freely permitted subject to total import licensing policy which might need to have regard to the balance of payments situation and the possible manufacture of surgical dressings in New Zealand.

*Electric Power Charges:*

The Government has no direct control over the charges made by local power authorities, but understands that the company is seeking power supply at not more than .75d. a unit. The Government will use its influence to ensure that as far as possible power will be available to the company at no more than this rate.

*Miscellaneous:*

Water charges – the Government appreciates the importance to the company of reasonable water charges and will support it in its negotiations to this end.

Effluent – The company will take all reasonable steps to ensure that problems do not arise through the discharge of manufacturing wastes or the creation of air pollution. The Government will take all possible steps, if these should be necessary, to assist the company in arranging adequate effluent disposal facilities.

Immigrant staff – The Government will assist with the recruitment of skilled staff from the United Kingdom and/or Holland for employment in the industry. The Government will also use its good offices to assist the company in finding accommodation for its staff and in arranging suitable mortgage finance for erecting houses for such staff.

Shifts – The plant will require to operate 24 hours a day for five days of the week. The company will conform to protective laws governing the employment, and particularly the night employment, of females and juniors, and will provide good working conditions and welfare arrangements for employees.

Distribution – The Government notes the company's proposal to distribute its products through existing channels, and is glad to learn of the intention of the company to resist any collusive arrangement on the part of distributors, wholesalers or retailers which might aim at the charging of higher prices to consumers or the denial of supplies to bona fide traders.

FIRST SCHEDULE—*continued*

Import licences for plant and raw materials—Subject to established import licensing procedures and policy, import licences and overseas currency necessary to bring in the required plant and raw material will be and continue to be freely made available.

Subject to the provisions covering the maximum share of the market of any one product set out herein the importation of sufficient quantities of cloth in the grey to enable the full utilisation of the bleaching and printing plant will also be permitted. This plant will even at the first stage be employed to a considerable extent on bleaching and raising products manufactured in depth.

Remittance of profits and dividends—The New Zealand Government follows the policy of facilitating the remittance of dividends and interest earned by overseas investments, and although formal application needs to be made to the Reserve Bank to transfer such moneys through the banking system, no difficulty is foreseen in this respect.

Repatriation of Capital—Although no firm guarantee can be given, it is current policy to permit the repatriation of capital where the investment in the first place has the approval of the Reserve Bank. No difficulty is foreseen in this respect.

Excess Profits Retention Tax—It is the general principle that companies formed to commence new manufacturing ventures should be exempt from excess retention tax for a period of six years from the time they begin to derive taxable income. The Commissioner of Inland Revenue is also being empowered to remove the requirement for payment of excess retention tax by companies when he is satisfied that the income is retained for necessary development or expansion involving the acquisition of buildings, plant or other productive equipment. No difficulty for the company is expected in this respect.

Plant depreciation allowance—It is recognised that when the ratio of capital employed to turnover is high, machinery must be employed continuously under pressure. Accordingly, your company will be supported in its submissions to the Commissioner of Inland Revenue for a plant depreciation allowance of 20 per cent (diminishing value) plus the special depreciation allowance of 20 per cent spread over five years. In law the actual decision on this however rests with the Commissioner of Inland Revenue.

I would appreciate your confirmation that this letter accords with your understanding of the agreement now reached between the company and the Government. As soon as this is received the project can, as far as the Government is concerned, be commenced immediately. My Department will give the company every reasonable assistance within its power.

I would like to conclude by assuring you that in this undertaking, of considerable significance in the industrial development of New Zealand, the company will have the cordial goodwill of the Government.

Yours faithfully,

P. N. HOLLOWAY

Minister of Industries and Commerce

FIRST SCHEDULE—*continued*Smith & Nephew Associated Companies Limited  
Wellington.

11 August 1960

The Honourable P. N. Holloway,  
Minister of Industries and  
Commerce,  
Her Majesty's New Zealand Government,  
Wellington.

Dear Sir,

We have for acknowledgement your Memorandum dated 12 August 1960, in regard to the proposed terms covering the establishment of a cotton industry in New Zealand. We have carefully studied this and agree with the terms as set out therein.

Yours faithfully,

Smith &amp; Nephew Associated Companies Limited

G. WHITTAKER  
Deputy Chairman  
B. C. LOCKHART-JERVIS  
Director  
J. A. LEAVEY  
Director

15th August, 1960.

Mr. G. Whittaker,  
Deputy Chairman,  
Smith & Nephew Associated  
Cos. Ltd.,  
c/o A. H. Giles & Co. Ltd.,  
P.O. Box 5244,  
Auckland.

Dear Sir,

I thank you for your letter of the 12th August in which you have accepted on behalf of your companies the conditions covering the establishment of a cotton industry in Nelson.

My letter of the 12th August was addressed to Smith and Nephew Associated Cos. Ltd. and I wish now to confirm that any agreement reached between us is assignable by you to any company formed in New Zealand for the purpose of carrying out the establishment of said industry.

Yours faithfully,

P. N. HOLLOWAY  
Minister of Industries and Commerce

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## SECOND SCHEDULE

## COPY OF AGREEMENT FOR MUTUAL RESCISSION

Prime Minister's Office,  
Wellington.

13 January 1962.

IT IS AGREED by the Government of New Zealand (hereinafter called "the Government") of the one part and Smith and Nephew Associated Companies Limited (hereinafter called "the Company") and Commonwealth Fabric Corporation Limited (hereinafter called "CFC") of the other part:

1. That the Agreement embodied in the Exchange of Letters of 12 August 1960 between the Minister of Industries and Commerce on behalf of the Government and Mr G. Whittaker on behalf of the Company be terminated as at this date and that the Government will pay compensation to the Company, its associates and CFC on the following basis:

- (a) Firstly, the Government will purchase through its nominees all the shares in CFC at a price equal to the total amount paid to CFC by the shareholders up to the date of the transfer of the shares. The transfer of shares and payment therefor will be effected as soon as possible but not later than 15 February 1962.
- (b) Secondly, the Government will reimburse the Company, its associates and CFC to the extent not covered by paragraph 1 (a) in respect of all monies reasonably and properly expended by them or any of them in pursuance of or reasonably incidental to the said Agreement.
- (c) Thirdly, the Government will undertake and discharge all liabilities, to the extent not already covered herein, which have been reasonably and properly undertaken or incurred by the Company, its associates and CFC in pursuance of or reasonably incidental to the said Agreement.
- (d) Fourthly, the Government will pay to the Company the total sum required to compensate fairly all employees or prospective employees committed to the Company or any of its associates or CFC in respect of the cotton mill project for the damage, injury, loss or expense suffered or incurred or which may be suffered or incurred by them in the future as a result of the termination of the said Agreement. Compensation will be paid by the Company on a fair and reasonable basis and the Company will consult with the Government on this question prior to the settlement of individual claims.
- (e) Fifthly, the Government will compensate the Company for its loss of services of directors, technical officers and staff, through their diversion and attention to the said project from 12 August 1960 to the date hereof, the said sum being deemed to include the emoluments and salaries incurred by the Company referable to the said project.

SECOND SCHEDULE—*continued*

- (f) Sixthly, the Government will pay to the Company, its associates or CFC a sum in respect of interest on any monies employed by any of them in any manner in connection with the said project since 12 August 1960 down to the date hereof at the rate of 6 per centum per annum.
- (g) Seventhly, the Government will reimburse the Company, its associates or CFC in respect of any other expense reasonably and properly paid or incurred by any of them in respect of the said project or the winding up thereof but no sum by way of general damages.

2. The Government will indemnify and keep indemnified the company, its associates and CFC and the respective directors thereof jointly and severally, from and against all actions claims suits demands liabilities costs expenses and loss of any nature whatsoever brought against or suffered or incurred by them or any of them or which may be brought against or suffered or incurred by them or any of them in the future arising out of the said Agreement or the termination thereof Provided Always that the Company and CFC and their said Directors and each of them will at all times at the expense of the Government render the Government all reasonable assistance which may be necessary to defend or minimise the same.

3. All monies payable by the Government pursuant to agreement or an award on arbitration shall bear interest at the rate of 6 per centum per annum as from 13 January 1962 and shall be paid in sterling, credited to Smith and Nephew Associated Companies Limited in London, United Kingdom, within seven days of such agreement or award.

4. All amounts to be paid by the Government pursuant to this Agreement shall be determined by agreement between the Government and the Company and, failing agreement, by arbitration under the Arbitration Act 1908 and its amendments, the parties each to appoint one arbitrator and the arbitrators to appoint an umpire before entering on the arbitration. This Agreement shall be deemed a submission to arbitration. It is hereby expressly agreed that if after reasonable negotiation either party advises the other that agreement has not been reached due steps will be taken by both to ensure that the arbitration is held within three months following such advice.

5. The Government will pay the Company's legal costs and disbursements of and incidental to this Agreement and the implementation thereof and negotiations necessary to agreement as to payments to be made by the Government Provided Always that the costs of any arbitration shall be in the discretion of the arbitrators.

6. All payments by way of compensation to individual persons shall be assessed having regard to any liability on that person to pay income tax in respect thereof.

7. The Company and CFC will use their best endeavours to assist the Government, where practicable, in disposing of equipment and material already delivered to or ordered for the said project and in the prompt winding up of the whole project.

**SECOND SCHEDULE—*continued***

8. The term “its associates” used herein means the following companies:

David Whitehead and Sons (Holdings) Ltd  
A. H. Giles and Company Ltd  
Smith and Nephew (New Zealand) Ltd  
Smith and Nephew Textiles Ltd

Signed on behalf of the Government of  
New Zealand

**J. R. MARSHALL**

**Minister of Industries and Commerce**

Signed on behalf of Smith and Nephew  
Associated Companies

**J. A. LEAVEY**  
Director

Signed on behalf of Commonwealth Fabric  
Corporation Limited

**G. A. WHITTAKER**  
Director

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This Act is administered in the Treasury.

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