CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

REPORT TO THE MINISTER OF FINANCE

REQUEST FOR TARIFF RELIEF BY PEERLESS CLOTHING INC. REGARDING DYED WOVEN FABRIC OF RAYON

JANUARY 24, 2001

PEERLESS CLOTHING INC.

REQUEST NO.: TR-2000-001

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INTRODUCTION

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

On July 17, 2000, pursuant to the Minister's reference, the Tribunal received a request from Peerless Clothing Inc. (Peerless), of Montréal, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations, from all countries, of a dyed woven fabric of rayon, for use as lining in the manufacture of men's suits, jackets, blazers or vests (waistcoats). Peerless also sought tariff relief retroactive to February 15, 2000, the date on which the first shipments of the goods were expected to arrive.

On September 1, 2000, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,[2] which was distributed to known interested parties. The fabric under investigation was described in the notice as "woven fabric, dyed, solely of textured cuprammonium rayon filament yarns in one direction and textured viscose rayon filament yarns in the other direction, weighing less than 100 g/m^2, of tariff item No. 5408.22.29, for use as lining in the manufacture of men's suits, jackets, blazers or vests (waistcoats) (the subject fabric)". Peerless asked the Tribunal to conduct its investigation expeditiously. The Tribunal, however, was not persuaded that the circumstances constituted critical circumstances, but indicated that, barring any opposition to the request, it would conduct its investigation in the most expeditious manner.

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabric. A request for information was also sent to potential importers of the subject fabric. A letter was sent to the Canada Customs and Revenue Agency (CCRA) requesting a complete description of the physical characteristics of the sample submitted by Peerless, an opinion on whether the tariff relief is administrable, as well as suggested wording should tariff relief be recommended. 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, Peerless, questionnaire respondents and other interested parties was provided to those who had become parties to the proceedings by filing notices of appearance in the investigation. Following distribution of the staff investigation report, Peerless and the Canadian Textiles Institute (CTI) filed submissions with the Tribunal.

PRODUCT INFORMATION

The subject fabric, imported from Germany, is used as lining in the manufacture of men's suits, jackets, blazers and vests. Peerless performs all the cutting, sewing, finishing and quality control of end products at its facility in Montréal.

1. R.S.C. 1985 (4th Supp.), c. 47.
2. C. Gaz. 2000.I.2971.

As of January 1, 2000, the subject fabric, classified for customs purposes under tariff item No. 5408.22.29 of the schedule to the *Customs Tariff*,[3] is dutiable at 16 percent *ad valorem* under the MFN tariff and is duty free under the U.S. tariff, the Mexico tariff, the Canada-Israel Agreement tariff and the Chile tariff. The MFN tariff will remain at 16 percent *ad valorem* until December 31, 2002, and then will be reduced to 15 percent *ad valorem* and 14 percent *ad valorem* on January 1, 2003, and January 1, 2004, respectively.

REPRESENTATIONS

Clothing Industry

Requester

Peerless has been manufacturing men's apparel since 1919. The company is privately owned and employs in excess of 2,000 people. Following the *Canada-United States Free Trade Agreement* (FTA), Peerless established itself as an international manufacturing and marketing company, with a significant presence in the U.S. market. In this respect, Peerless has signed exclusive licence agreements to market well-known brand names, such as Chaps by Ralph Lauren, Ralph by Ralph Lauren and DKNY (Donna Karan New York).

In its request for tariff relief, Peerless claimed that there are no identical or substitutable fabrics available from Canadian textile producers. Peerless alleged that no one in Canada makes a blended woven fabric of cuprammonium rayon filament yarns in one direction and viscose rayon filament yarn in the other direction and indicated that, as established in Request No. TR-95-009,[4] no one in Canada makes fabrics of either 100 percent cuprammonium rayon or 100 percent viscose rayon. Peerless stated that some Canadian manufacturers make lower-quality linings, i.e. acetate or acetate-cuprammonium fabrics, but that these fabrics cannot be substituted for the subject fabric because they shrink, expand or lose structural integrity during Peerless's various manufacturing processes. According to Peerless, the subject fabric provides a better quality lining.

Peerless stated that this request was triggered by a recent U.S. action to deny preferential tariff treatment to men's apparel containing linings made with imported 100 percent viscose rayon. Previously, men's apparel manufactured in Canada with such fabrics qualified as NAFTA origin goods. Peerless is contesting this U.S. action, but, in the meantime, has had to switch to the subject fabric in order to maintain NAFTA origin status for its apparel exported to the United States. Peerless indicated that exports to the United States represent about 95 percent of its sales and, as the price competition is fierce, the ability to maintain NAFTA status is critical to its continued success.

Peerless submitted that the removal of the customs duty on imports of the subject fabric would reduce its costs, allow it to compete more effectively and enable it to maintain or increase sales. As a result, Peerless indicated that it would be able to maintain or increase employment and production. In addition, Peerless argued that tariff relief would offset some of the potential problems associated with the

3. R.S.C. 1985 (3d Supp.), c. 41.
4. *Peerless Clothing* (12 April 1996) (CITT).

modifications to the duty drawback program.[5] In this connection, Peerless indicated that it no longer gets a drawback for the imported fabric that it uses for its apparel exported, under tariff preference levels (TPLs),[6] to the United States and that, as such, these provisions are seriously damaging to this export business.

In its response submission of November 23, 2000, Peerless reiterated that, based on the evidence, fabrics identical to or substitutable for the subject fabric are not produced in Canada. In this regard, Peerless indicated that the CTI, Consoltex Inc. (Consoltex) or Monterey Textiles 1996 Inc. (Monterey) did not present any evidence in the form of samples and statistics to substantiate its claim that lining fabrics available in Canada can be used by Peerless.

With respect to the CTI's reference that the Balson-Hercules division of Consoltex, located in the United States, produces fabrics substitutable for the subject fabric, Peerless stated that there is no evidence to support this claim. Moreover, Peerless pointed out that Balson-Hercules is not a Canadian textile producer; in this connection, Peerless indicated that, in Request No. TR-95-009, the Tribunal held that the potential availability of fabrics produced outside Canada is not relevant and does not fall within the *Textile Reference Guidelines*. In a letter dated October 18, 2000, Peerless advised the Tribunal that discussions were held with representatives of the lining division of Consoltex. Peerless stated that nothing came of those discussions because the cuprammonium rayon-viscose rayon blend is not available.

Peerless emphasized that its manufacturing process does not allow it to use linings made of acetate or acetate blends, including blends of acetate and cuprammonium rayon and that the cuprammonium rayon-viscose rayon lining is of a better quality than acetate or acetate blend linings. Peerless indicated that it purchases the subject fabric because it is simply not available in Canada. Moreover, Peerless pointed out that, in Request No. TR-95-009, the Tribunal established that acetate lining fabrics, as well as lining fabrics made of blends of acetate and cuprammonium rayon or viscose rayon, are not substitutable for fabrics made of 100 percent cuprammonium rayon or 100 percent viscose rayon.

Peerless submitted that the evidence establishes that tariff relief would have no adverse effects on the Canadian textile industry. In this regard, it stated that the evidence of Weston Apparel Manufacturing Inc. (Weston) is that it will continue to purchase acetate linings from Monterey.

Finally, Peerless submitted that retroactive tariff relief ought to be granted to February 15, 2000, because it has been thwarted by the CTI in its attempts to obtain speedy relief through the Department of Finance. Peerless indicated that, subsequently, no member of the CTI responded to the Tribunal's questionnaire concerning Peerless's request and that the CTI presented no evidence of any Canadian production or potential production of the subject fabric.

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5. Under the *North American Free Trade Agreement,* a duty refund system called "the lesser-of concept", effective January 1, 1996, replaced the drawback regulations for Canada-United States trade. Under this 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.
   However, under Canadian TPLs, formerly known as tariff rate quotas under the FTA, items receive preferential NAFTA tariff treatment despite their incorporation of non-North-American (i.e. non-originating) fabric.
6. The subject fabric is used in apparel exported as goods of NAFTA origin, as well as apparel exported under TPLs (i.e. non-NAFTA originating).

Weston

In response to the Tribunal's questionnaire, Weston, of Toronto, Ontario, a manufacturer of men's suits, jackets and trousers, supported Peerless's request for tariff relief. Weston stated that identical or substitutable fabrics are not available from domestic textile manufacturers. Weston indicated that it currently purchases linings made of 100 percent acetate from Monterey. It stated that the subject fabric is of superior quality and that tariff relief, should it be granted, would not affect Weston's purchases of linings from Monterey.

Textile Industry

Consoltex

Consoltex, of Ville Saint-Laurent, Quebec, indicated that Balson-Hercules, its men's lining division located in the United States, had some discussions with Peerless regarding the possibility of supplying Peerless with the subject fabric. No further information was provided by Consoltex concerning Peerless's request for tariff relief.

Monterey

Monterey, of Drummondville, Quebec, opposed the request for tariff relief claiming that it produces fabrics for use as linings in the manufacture of men's apparel. However, Monterey decided not to file a response to the Tribunal's questionnaire. Monterey stated that, although it is an established firm and a reliable supplier of quality linings, Peerless has consistently refused to do business with it.

CTI

In its submission of November 15, 2000, the CTI indicated that Consoltex and Monterey opposed Peerless's request. The CTI indicated that Consoltex's Balson-Hercules division produces cuprammonium and acetate-cuprammonium linings and that Monterey also produces acetate linings, which are substitutable for the subject fabric. According to the CTI, the linings produced by Consoltex and Monterey are used in men's wear that competes directly with men's apparel produced by Peerless.

The CTI pointed out that the NAFTA rules of origin do not disallow (and never have disallowed) preferential treatment for men's apparel using 100 percent cuprammonium rayon filament linings. The CTI stated that these linings are specifically excluded from note 1 of the chapter 62 NAFTA rules of origin, which requires that "visible lining fabrics" be woven in a NAFTA country. Moreover, the CTI indicated that suits made with imported 100 percent viscose rayon linings are not (and never have been) eligible for preferential treatment under NAFTA. The CTI stated that such linings have to be woven in a NAFTA country in order to fulfil NAFTA's "visible lining fabrics" rule spelled out in note 1 of the chapter 62 NAFTA rules of origin.

The CTI submitted that Peerless's request for tariff relief is not based on a demand by U.S. consumers for particular physical or performance characteristics featured in cuprammonium rayon-viscose rayon blend linings. Rather, according to the CTI, Peerless's request is based on the fact that it had to switch to the subject fabric in order to maintain NAFTA origin status for its apparel exported to the United States. The CTI stated that the use of cuprammonium rayon-viscose rayon blend linings would eliminate the need for Peerless to use scarce NAFTA TPLs for suits exported to the United States. In this

regard, the CTI indicated that the use of a 55 percent cuprammonium rayon-45 percent viscose rayon blend would allow Peerless to take advantage of the NAFTA exception for cuprammonium rayon filament fabrics. The CTI pointed out that, because cuprammonium rayon predominates by weight, the fabric is classified under the tariff items specifically exempted from the visible lining requirements.

The CTI stated that Peerless has consistently refused to buy linings from Canadian weavers. In this connection, the CTI indicated that recent attempts by Consoltex's Balson-Hercules division to supply Peerless were fruitless, even though Balson-Hercules is a reputable and highly regarded supplier of linings to the men's wear trade in the United States. Moreover, the CTI indicated that Peerless continually refuses to consider Monterey's acetate linings, even though Monterey supplies these linings to other equivalent quality men's apparel producers. The CTI submitted that, as a result, it is impossible for Canadian fabric producers to provide evidence of sales of identical linings to men's wear customers.

The CTI stated that, while Peerless chooses not to purchase linings from Consoltex or Monterey, other men's apparel manufacturers do. The CTI indicated that these apparel manufacturers compete in the same marketplace as Peerless and, therefore, should not be penalized with respect to their competitive position vis-à-vis imported linings.

OTHER INFORMATION

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada does not maintain quota restraints on the subject fabric.

The CCRA indicated that there would be no additional costs over and above those incurred by it to administer the tariff relief, should it be granted.

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 so doing, to take into account all relevant factors, including the substitutability of an imported fabric for a domestic fabric and the ability of domestic producers to serve the Canadian downstream industries. Consequently, the Tribunal's decision on whether to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

Peerless's request covers a blended cuprammonium rayon-viscose rayon fabric for use as lining in the manufacture of certain men's apparel. Peerless claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabric. This request is somewhat similar to Request No. TR-95-009 filed by Peerless in May 1995. That case covered importations of fabrics made of either 100 percent cuprammonium rayon or 100 percent viscose rayon for use as lining in the manufacture of selected men's apparel. On April 12, 1996, the Tribunal, being satisfied that there was no Canadian production of identical or substitutable fabrics, recommended to the Minister that tariff relief be granted on importations of these fabrics. The Tribunal notes that Order in Council P.C. 1996-1352[7] dated August 28, 1996, amended the schedule to the *Customs Tariff*, *inter alia*, by removing the customs duty on the importation of: (1) woven fabrics, solely of cuprammonium rayon filament yarns; and (2) woven fabrics, solely of viscose rayon filament yarns, both measuring less than 200 decitex, of a weight not exceeding

7. *Customs Duties Reduction or Removal Order, 1988, amendment*, C. Gaz. 1996.II.2810.

100 g/m^2, of subheading No. 5408.21 or 5408.22, for use in the manufacture of men's suits, jackets, blazers and vests (waistcoats).

The present request for tariff relief is for a fabric made of the constituent components covered by Order in Council P.C. 1996-1352. In its submission, the CTI indicated that Consoltex's Balson-Hercules division produces cuprammonium and acetate-cuprammonium linings and that Monterey also produces acetate linings, which are substitutable for cuprammonium rayon-viscose rayon linings. However, the Tribunal notes that Balson-Hercules is not a Canadian textile producer, given that it is located in the United States. The Tribunal is clearly directed by its terms of reference to make recommendations that "maximize net economic gains to Canada". Accordingly, the Tribunal takes the view that the potential availability of fabrics produced in the United States is not relevant. This viewpoint is consistent with its decision on Request No. TR-95-009.

With respect to acetate linings produced by Monterey, the Tribunal notes that the weight of the evidence in Request No. TR-95-009 indicated that such linings are not substitutable for fabrics of 100 percent cuprammonium rayon or 100 percent viscose rayon. In the present case, the parties opposing the request for tariff relief did not provide the Tribunal with any solid evidence to indicate that the situation is any different with respect to the blended cuprammonium rayon-viscose rayon fabric. The Tribunal has stated on a number of occasions in the past[8] that it is the responsibility of the domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable fabrics. On this point, the Tribunal notes that domestic producers decided not to file a response to the Tribunal's questionnaire concerning this request for tariff relief. Accordingly, the Tribunal concludes that the lining fabrics produced in Canada are not substitutable for the subject fabric.

The CTI stated that Peerless has consistently refused to buy linings from Canadian producers, while other men's apparel manufacturers do. The Tribunal notes that Peerless clearly explained in its request that domestic linings made of acetate or acetate blends, including blends of acetate and cuprammonium rayon, are not compatible with the manufacturing processes used by Peerless. The Tribunal also notes that Weston, a Canadian manufacturer of men's suits, jackets and trousers, stated that identical or substitutable fabrics are not available from domestic textile manufacturers. Weston indicated that it currently purchases linings made of 100 percent acetate from Monterey, but that the subject fabric is of superior quality. The Tribunal takes note of the fact that, should tariff relief be granted, Weston would continue to purchase linings from Monterey.

One of the arguments advanced by Peerless in its request for tariff relief pertained to a recent U.S. action to deny preferential tariff treatment to men's apparel containing linings made with imported 100 percent viscose rayon; in other words, these goods no longer qualify as NAFTA origin and, upon exportation to the United States, would attract significant duties. Consequently, in order to regain its preferential tariff treatment, Peerless switched to the subject fabric. However, the CTI indicated that suits made with imported 100 percent viscose rayon lining have never been eligible for preferential treatment under NAFTA. The Tribunal is of the view that whether or not finished apparel containing 100 percent viscose rayon lining can qualify for tariff preferential treatment in the United States is irrelevant to the

8. See, for example, *Camp Mate* (10 June 1996), TR-95-051 (CITT); *Lady Americana Sleep Products* (12 February 1997), TR-95-064 and TR-95-065 (CITT); *Cambridge Industries* (12 February 1999), TR-98-001 (CITT); *Helly Hansen Canada* (19 March 1999), TR-97-015, TR-97-016 and TR-97-020 (CITT); *Jones Apparel Group Canada* (8 July 1999), TR-98-017 (CITT); *Tribal Sportswear* (24 August 1999), TR-98-019 (CITT); and *JMJ Fashions* (27 October 2000), TR-99-008 (CITT).

analysis. The essential fact of this case still remains that fabrics identical to or substitutable for the subject fabric are not produced in Canada.

Other than the corresponding duty revenues forgone by the government, the Tribunal does not believe that there will be any direct commercial costs associated with the removal of the customs duty on the importation of the subject fabric. On the basis of the information available to the Tribunal, tariff relief would result in yearly benefits to Peerless in excess of $100,000. In addition, tariff relief would provide benefits to users in the form of cost reductions, which could translate into the hiring of new employees, the purchase of new equipment and the provision of further spin-off benefits for local support industries. In summary, the Tribunal finds that the tariff relief requested by Peerless would provide net economic gains to Canada.

As noted earlier, Peerless submitted that retroactive tariff relief ought to be granted to February 15, 2000, the date on which the first shipments of the goods were expected to arrive, because it has been thwarted by the CTI in its attempts to obtain speedy relief through the Department of Finance. While the terms of reference governing the textile tariff relief program are silent on the issue of the retroactive application of duties, the Tribunal clearly stated in the *Textile Reference Guide* that it will not consider any request for retroactive tariff relief other than in the most exceptional circumstances.[9] While the Tribunal is of the opinion that a producer or an association of producers should exert its right to oppose a request for tariff relief with circumspection and not without well-founded reasons or chances of being successful, the Tribunal considers that this ground, in itself, does not constitute exceptional circumstances, as envisaged by the guidelines.

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 woven fabric, dyed, solely of textured cuprammonium rayon filament yarns in one direction and textured viscose rayon filament yarns in the other direction, weighing less than 100 g/m^2, of subheading No. 5408.22, for use as lining in the manufacture of men's suits, jackets, blazers or vests (waistcoats).

Patricia M. Close
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Presiding Member

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9. *Textile Reference Guide* (October 1996) at 9.