



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Textiles

RECOMMENDATION

Request No. TR-2007-003

Peerless Clothing Inc.

(Polyester Tuxedo Facing)

*Recommendation issued
Tuesday, February 5, 2008*

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REPORT TO THE MINISTER OF FINANCE

INTRODUCTION

1. 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.

2. On June 22, 2007, 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 woven fabrics, made of polyester, with or without backing, for use as facing in the manufacture of men's or boys' tuxedos.

3. On November 15, 2007, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,³ which was distributed to those who might have an interest. The fabrics under investigation are woven fabrics, with or without backing, solely of yarns of textured polyester filaments, of a weight not exceeding 225 g/m², of tariff item No. 5407.52.90 of the schedule to the *Customs Tariff*,⁴ for use as facing or braids in the manufacture of tuxedos (the subject fabrics).

4. As part of the investigation, the Tribunal's research staff sent questionnaires to potential domestic producers of fabrics identical to or substitutable for the subject fabrics and a request for information to potential users and importers of the subject fabrics. It also requested the Canada Border Services Agency (CBSA) to provide a complete description of the physical characteristics of the fabric samples submitted by Peerless, an opinion on whether the requested tariff relief would be administrable and suggested wording to describe the subject fabrics should tariff relief be recommended. The CBSA indicated that there would be no additional costs, over and above those that it normally incurs, to administer the tariff relief should it be granted.

5. Letters were also sent to the Department of Foreign Affairs and International Trade and the Department of Industry, requesting information that could assist the Tribunal in its investigation.

6. A staff investigation report was not necessary for the purposes of this investigation, since there was no opposition to the request.

7. On December 17, 2007, the Tribunal indicated that it intended to issue a report to the Minister concerning the request based on the information on the record.

1. The terms of reference were last modified on October 27, 2005.
2. R.S.C. 1985 (4th Supp.), c. 47.
3. C. Gaz. 2007.I.3255.
4. S.C. 1997, c. 36.

8. A public hearing was not held for this investigation.⁵

PRODUCT INFORMATION

9. Peerless imports the subject fabrics from Germany. It submitted two fabric samples with its request for tariff relief. The first sample was a black dyed fabric woven in both the warp and the weft from yarns of textured synthetic (polyester) filaments. The fabric weighed 134 g/m². The second sample was made from three layers laminated together and weighed 212 g/m². The first layer was a black dyed fabric woven in both the warp and the weft from yarns of textured synthetic (polyester) filaments. The second layer consisted of a 0.3-mm-thick sponge-like layer of cellular plastics (polyurethane) acting as an adhesive to bond layers one and three together. The third layer was a black dyed fabric knitted from yarns of polyester filaments.

10. As of January 1, 2008, the subject fabrics, classified for customs purposes under tariff item No. 5407.52.90, are dutiable at 14 percent *ad valorem* under the Most-Favoured-Nation (MFN) Tariff and the Costa Rica Tariff, and are duty free under the United States Tariff, the Least Developed Country Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

REPRESENTATIONS

Position of the Clothing Industry

Peerless

11. Peerless has been manufacturing men's apparel in Canada since 1919. The company is Canada's largest manufacturer of men's fine tailored clothing, with a significant presence in the U.S. market. Peerless has signed exclusive licence agreements to market well-known brand names, such as Chaps by Ralph Lauren and Lauren by Ralph Lauren.

12. Peerless claimed that no Canadian textile manufacturer produces fabrics that are identical to or substitutable for the subject fabrics.

13. Peerless uses the subject fabrics as facing for tuxedos. Peerless indicated that facing is the differentiating factor between regular men's suits and tuxedos and that the subject fabrics are necessary to give the look that meets the needs of function and fashion.

14. Peerless stated that its business decisions are driven by the market and that, if the market demands garments with the features created by the subject fabrics, it must meet that demand or face a decline in sales. Peerless contended that, if it were unable to satisfy the market demand in North America for such apparel, this demand would be met by foreign imports of finished goods.

5. Pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499, the Tribunal has the authority to proceed by way of written submissions.

15. As for the anticipated benefits of tariff relief, Peerless submitted that competition in the men's apparel industry is global in scale and very fierce and that removal of the customs duty on imports of the subject fabrics would allow it to stay competitive in the tuxedo market and possibly increase its share of domestic and foreign markets. Peerless also submitted that tariff relief would help it to maintain its current employment levels. It indicated that any cost savings would be passed on to the consumer. Finally, Peerless submitted that tariff relief would offset the negative consequences of the elimination of duty drawback under the *North American Free Trade Agreement*⁶ with respect to the imported inputs that it uses in apparel exported to the United States.⁷

16. Peerless requested that tariff relief be retroactive to June 22, 2007, the date of filing of the request for tariff relief.

Position of the Textile Industry

17. Domestic fabric producers did not oppose the request for tariff relief.

ANALYSIS

18. 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.

19. Peerless claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabrics. This claim was not contested by any domestic fabric producers. Therefore, 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 fabrics. On the basis of the information available to the Tribunal, tariff relief would result in yearly benefits to users of the subject fabrics in excess of \$25,000. In summary, the Tribunal finds that the tariff relief requested by Peerless would provide net economic gains for Canada.

20. As for Peerless's request for retroactive tariff relief, the Tribunal has stated in previous cases that it will not consider recommending such relief other than in exceptional circumstances. Peerless has provided no evidence to warrant such a recommendation. However, it is the Tribunal's view that the commencement of tariff relief as soon as possible is warranted.

6. *North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [NAFTA].

7. Non-NAFTA fabrics (i.e. fabrics not originating in North America) that are incorporated into apparel exported to the United States would generally qualify for duty drawback, unless the apparel is exported under zero duty tariff preference levels.

RECOMMENDATION

21. In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted as soon as possible, for an indeterminate period of time, on importations from all countries of woven fabrics, with or without backing, solely of yarns of textured polyester filaments, of a weight not exceeding 225 g/m², of tariff item No. 5407.52.90, for use as facing or braids in the manufacture of tuxedos.

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Member

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