

**CANADIAN
INTERNATIONAL
TRADE TRIBUNAL**



**TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR**

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
PEERLESS CLOTHING INC.
REGARDING
NEEDLELOOM FELT**

MAY 5, 2003

PEERLESS CLOTHING INC.

REQUEST NO. TR-2002-002

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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.

On September 10, 2002, 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 needleloom felt for use as chest pieces in the manufacture of men's jackets (including suit jackets) and blazers. Peerless also sought tariff relief retroactive to September 1, 2002.

On October 22, 2002, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,³ which was distributed to known interested parties. The fabric under investigation was described in the notice as "needleloom felt, not impregnated, coated, covered or laminated, containing 10 percent or more of wool or fine animal hair, of subheading No. 5602.10, for use as chest pieces between the lining and outer fabric in the manufacture of men's jackets (including suit jackets) and blazers" (the subject fabric).

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 users and 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 requested tariff relief would be administrable and suggested wording to describe the fabric, should tariff relief be recommended. Letters were also sent to the Department of Foreign Affairs and International Trade (DFAIT) and the Department of Industry requesting information that could assist the Tribunal in its investigation.

A staff investigation report summarizing the information received from these departments, Peerless, questionnaire respondents and other interested parties was provided to those that had become parties to the proceedings by filing notices of appearance in the investigation. Following distribution of the staff investigation report, Peerless filed a submission with the Tribunal on January 24, 2003.

Given that there was sufficient information on the record, the Tribunal decided that a public hearing was not required for this investigation.

On February 11, 2003, the Tribunal received a late submission from Doubletex. The Tribunal accepted the document and allowed Peerless to file a reply submission, which it did on March 7, 2003.

PRODUCT INFORMATION

Although the request for tariff relief covers fabric imported from all countries, Peerless currently imports only small amounts of the subject fabric from Italy. The fabric sample submitted with Peerless's request for tariff relief was a needleloom felt made from a blend of 55 percent polyester staple fibres,

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1. The terms of reference were last modified in 2002.
 2. R.S.C. 1985 (4th Supp.), c. 47.
 3. C. Gaz. 2002.I.3294.

30 percent rayon staple fibres and 15 percent wool or other fine animal hair. The felt weighed 80 g/m² and was not impregnated, coated, covered or laminated.

The needleloom felt is used as a chest piece insert between the lining and the outer fabric of men's jackets and blazers. The purpose of the chest piece is to provide a crisp, smooth and enduring silhouette between the shoulders and to allow the garment to move with the wearer. During the production process, the subject fabric is spread, cut and sewn in place as part of the finished garment. No operations are subcontracted.

As of January 1, 2003, the subject fabric, classified for customs purposes under classification No. 5602.10.90.90 of the schedule to the *Customs Tariff*,⁴ is dutiable at 15 percent *ad valorem* under the MFN Tariff, at 10 percent *ad valorem* under the General Preferential Tariff, and at 12 percent *ad valorem* under the Costa Rica Tariff and is duty free under the United States Tariff, the Least Developed Country Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff. The MFN tariff will be reduced to 14 percent *ad valorem* on January 1, 2004.

REPRESENTATIONS

Clothing Industry

Peerless

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 submitted that no Canadian manufacturer produces needleloom felt made of a blend of polyester, rayon and wool fibres for use as chest pieces and that there are no identical or substitutable fabrics available from Canadian textile producers. Peerless stated that it is not able to purchase this fabric in Canada because of the wool content. Peerless indicated that the wool contained in the subject fabric gives a jacket a better fit, thereby improving the overall quality of the garment. Peerless also indicated that the fabric that it currently uses is made of a polyester blend and is not as good as it could be, given the ever-improving Peerless quality standards.

Peerless stated that competition in the men's apparel industry is global in scale and fierce. Peerless indicated that the removal of the customs duty on imports of the subject fabric would allow it to stay competitive in the market and possibly increase its market share in the domestic and foreign markets. Peerless also stated that any cost savings would be passed on to the consumer.

Peerless indicated that, if the market demands garments that have the features that are created by the subject fabric, it must produce such garments or face a decline in sales. Peerless stated that it has certain cost and markup parameters that must be obtained in order for it to remain at its ultimate price point. Peerless also indicated that, if it were unable to satisfy the market demand for such apparel, this demand would be supplied by foreign imports of finished goods.

4. S.C. 1997, c. 36.

Peerless indicated that, because of the *North American Free Trade Agreement*,⁵ it no longer gets a drawback⁶ for the imported inputs that it uses for its apparel exported, under Canadian TPLs, to the United States and that this situation damages its export business. According to Peerless, tariff relief would assist it in overcoming the elimination of duty drawback.

In its submission of January 24, 2003, Peerless submitted that the evidence on the record shows that no Canadian textile manufacturer makes identical fabrics. Peerless stated that some of the samples provided by Texel Inc.⁷ (Texel) and Doubletex⁸ contain wool, but are only prototypes and, accordingly, are not evidence of actual production. Moreover, they cannot be used to make chest pieces because excessive fibre migration⁹ occurs and they are not uniform in consistency because they have thick and thin spots, i.e. there are more fibres in some areas than in others. Peerless also stated that neither Texel nor Doubletex indicated that these felt fabrics could be made in other colours, including black.

Peerless submitted that the fact that Doubletex is not an existing supplier of identical or substitutable fabrics is confirmed by Doubletex's evidence that it is only prepared to make the investments to actually produce the felt if it obtains an order from Peerless. Peerless stated that, although Texel and Doubletex have provided some evidence of a capability to produce fabrics that are similar to the subject fabric in fibre content, they have not provided any evidence to establish that they can make an acceptable product available in reasonable commercial quantities to supply the market demand for the subject fabric in Canada. Peerless indicated that, based on the evidence, Texel does not concentrate on the apparel sector and that Doubletex focuses on sectors other than men's jackets.

With respect to substitutability, Peerless submitted that the evidence shows that no Canadian textile manufacturer produces and supplies needleloom felt that is substitutable for the subject fabric. In this regard, Peerless stated that the two samples submitted by Doubletex and Texel, that purport to be identical to the subject fabric, because of their fibre content, are actually not identical in all material respects and are not substitutable for the subject fabric due to their defects in consistency and excessive fibre migration. Peerless stated that two other samples,¹⁰ submitted by Texel, are not substitutable because they do not contain wool, which is critical to achieve the feel that is demanded by the men's fashion industry in high-quality jackets. Peerless also stated that the fourth sample¹¹ provided by Texel does not contain polyester and is very stiff.

5. 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*].

6. *NAFTA* provides preferential *NAFTA* tariff treatment for certain quantities of apparel despite their incorporation of non-North American (i.e. non-originating) fabric. This preferential tariff treatment takes the form of Canadian tariff preference levels (TPLs), formerly known as tariff rate quotas under the *FTA*. TPLs permit the import of a fixed quantity of certain goods into Canada, the United States and Mexico at the *NAFTA* rate of duty. Goods entering a *NAFTA* country in quantities above the TPLs are subject to the higher MFN rate of duty. A new method of determining duty drawback, called "the lesser-of concept", was introduced in *NAFTA*. Under this new scheme, the duty drawback, or 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. Physical Exhibit TR-2002-002-10.5A.

8. Physical Exhibit TR-2002-002-10.7.

9. According to Canada Pad Linings Inc., fibre migration occurs when the staple fibres (short fibres) used to make needleloom felt are shed (become detached) from the felt and migrate through the wool fabric of the jacket and, thereby, appear on the chest of the jacket, which ruins the look of the garment.

10. Physical Exhibits TR-2002-002-10.5B and TR-2002-002-10.5C.

11. Physical Exhibit TR-2002-002-10.5D.

Peerless submitted that, as set out in previous Tribunal decisions, the fashion industry operates on a lower degree of substitutability than other, non-fashion, textile-using industries. In this respect, Peerless stated that the evidence of Texel and Doubletex does not establish that their samples meet the specifications of the subject fabric so as to render them identical or substitutable in any manner. In addition, Peerless indicated that Texel and Doubletex have not met the requirement set out in Tribunal jurisprudence that they provide evidence of actual orders and sales of fabrics identical to or substitutable for the subject fabric. Peerless also submitted that Doubletex has never produced a felt for this sector of the market and, therefore, would lose no sales. Peerless submitted that Texel has only one customer for chest piece fabric and that the sales of the now-outdated fabric are miniscule when compared to Texel's total sales.

Finally, Peerless submitted that, in the apparel industry, a purchaser of fabric does not normally approach existing or potential suppliers, given that the business practice in the industry is that fabric producers constantly approach manufacturers to offer fabrics. Peerless stated that the Tribunal set out in a previous decision that the onus resides principally on the supplier to make its product line known in the marketplace. Peerless stated that, even if it and other purchasers did not communicate with or ask Texel and Doubletex if they could make identical or substitutable fabrics (which, according to Peerless, did in fact occur), this is not a matter that establishes that Canadian producers make and supply fabrics that are identical to or substitutable for the subject fabric.

In its reply submission, Peerless reiterated that fibre migration is a very important issue in relation to needleloom felt. It submitted that, if Doubletex was unaware of this specific and important issue, this underlines the fact that Doubletex is not an established or knowledgeable supplier of such fabrics for men's wear. Peerless submitted that there is clear evidence that the Doubletex sample has serious weight variations and lumpiness and that there is no basis for Doubletex's assertion that the Peerless sample of the subject fabric also has a weight variation. Peerless submitted that there is no obligation on a purchaser to assume the development costs and risks of a potential supplier; rather, suppliers must bear their own product and development costs. In addition, Peerless submitted that certain statements made by Doubletex indicate that it has little or no experience in the field of needleloom felt for use as chest pieces in men's wear.

Jack Victor Limited (Jack Victor)

Jack Victor, of Montréal, Quebec, a manufacturer of fine men's clothing since 1913, employs over 600 people. Jack Victor supported Peerless's request for tariff relief and stated that it has not been able to source identical or substitutable fabrics in Canada. Jack Victor indicated that, should tariff relief be granted, Canadian manufacturers would become more competitive as a group vis-à-vis imports of finished goods in the Canadian market and also in export markets vis-à-vis other non-Canadian manufacturers. It also stated that the loss of duty drawback has hurt the company financially and competitively and that tariff relief would reverse some of these effects.

Weston Apparel Manufacturing Inc. (Weston)

Weston, of Toronto, Ontario, a manufacturer of men's suits, jackets, blazers, trousers and vests, also supported Peerless's request for tariff relief. Weston indicated that the chest piece is crucial to the proper tailoring and appearance of a jacket and that the subject fabric is ideally suited to meet current functional and fashion needs. Weston claimed that identical or substitutable fabrics are not available in Canada and that tariff relief on the subject fabric would allow it to stay competitive in the market and perhaps even increase its market share in the domestic and foreign markets. Weston also indicated that tariff relief would reduce costs and that any savings would be passed on to consumers.

Textile Industry

Canada Pad Linings Inc. (Canada Pad)

Canada Pad, of Montréal, Quebec, is a manufacturer of chest pieces and a distributor of a full range of interlinings. The company purchases the subject fabric from Italy; it is then cut and sewn at its facility according to the customer's specifications. Canada Pad indicated that this fabric is not available in Canada and, therefore, supports Peerless's request for tariff relief. According to Canada Pad, tariff relief would give it a better chance to compete against imports of chest pieces from Italy and Spain, as well as increase its sales in Canada and abroad. Canada Pad stated that this, in turn, would lead to an increase in employment at its facility.

Doubletex

Doubletex, of Montréal, Quebec, is Canada's largest fabric-converting mill and employs over 470 people. The company imports greige fabrics, including nylon, polyester, polyester/rayon, polyester/viscose, polyester/cotton and cotton, from around the world for conversion at its three plants in Montréal, Toronto, Ontario, and Winnipeg, Manitoba. It produces a wide range of products, often customized to the specific needs of apparel and home furnishings customers across Canada and the United States.

Doubletex opposed the request for tariff relief, stating that it is capable of producing identical or substitutable fabrics. Doubletex indicated that it was never asked to produce this product by anyone at Peerless and that it first heard about any requirement in this regard in early summer of 2002. Doubletex also stated that it sent a letter to Peerless in June 2002 indicating that it would be very interested in supplying Peerless with the needleloom felt. According to Doubletex, this letter went unanswered. Doubletex indicated that it has recently acquired some machinery and is currently in the process of making some modifications to the physical layout of its plant so as to enable it to produce such fabrics. Doubletex indicated that, should it receive an order from Peerless, it may need to make some additional investment and it would take six weeks to produce more samples. Doubletex stated that it is committed to having such fabrics in inventory in advance of any order made by Peerless and at a price that is competitive with any price of the Italian supplier. Doubletex also indicated that, once Peerless's price and commercial quantities requirements are known, its own prices for goods of equivalent quality would be equal to or lower than the competition.

In its final submission, Doubletex stated that Peerless never specified fibre migration as a parameter nor has it been measured by Peerless. Doubletex submitted that there is no visible evidence of fibres coming loose from its sample or the Peerless sample. In this regard, Doubletex stated that a woven lining protects the needlepunch interlining very well from fibre migration. Doubletex stated that the Peerless sample also has a weight variation. Doubletex indicated that it can provide the commercial quantities required by Peerless and that it is also able to offer the felt in black. Doubletex submitted that its focus is on all possible apparel, home furnishings, industrial and medical products.

Texel

Texel, of Saint-Elzéar de Beauce, Quebec, was founded in 1967 and is one of Canada's largest manufacturers of needled nonwoven fabrics destined for the apparel and footwear industries, as well as other technical sectors. Texel indicated that, since the 1970s, it has been manufacturing needled nonwoven fabrics made of polyester fibres, viscose fibres, polyester and wool blends, and viscose and polyester blends. Texel stated that, since 1996, it has been supplying Peerless with felt that contains viscose and polyester

fibres and that the contract for supplying this fabric to Peerless expired in December 2002. In this regard, Texel indicated that it has not been approached by Peerless to supply needleloom felt containing wool.

Texel opposed Peerless's request for tariff relief on the grounds that it can produce felt that meets Peerless's requirements in terms of composition, performance and quality. In this connection, Texel provided four samples of nonwoven fabrics, including the felt that is currently sold to Peerless and two prototype samples that Texel alleged are substitutable for the subject fabric. Texel indicated that, should tariff relief be granted, manufacturers of nonwoven fabrics will be adversely affected. This, according to Texel, could result in an immediate loss of market for its company, in the order of \$150,000 in sales to Peerless. Consequently, jobs would be lost.

OTHER INFORMATION

DFAIT informed the Tribunal that Canada does not maintain quota restraints on the subject fabric. No information was received from the Department of Industry.

The CCRA indicated that there would be no additional costs, over and above those normally 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.

In essence, Peerless, Jack Victor and Weston claimed that there are no identical or substitutable fabrics available from Canadian textile producers. Canada Pad, a manufacturer of chest pieces, also indicated that needleloom felt made from a blend of polyester, rayon and wool fibres is not available in Canada. On the other hand, Doubletex submitted that it is capable of producing identical or substitutable fabrics, and Texel indicated that it could produce felt that meets the requirements of users in terms of composition, performance and quality.

In the course of the investigation, Doubletex provided a prototype sample made of polyester, rayon and wool fibres. Texel provided two samples of needleloom felt that is currently in production, including one felt made of viscose and polyester fibres that it has sold to Peerless. Texel also provided two prototype samples (one made of polyester, rayon and wool and the other made of polyester and rayon) that it alleged are substitutable for the subject fabric. The Tribunal asked the CCRA to carry out an analysis of the three prototype samples submitted by Doubletex and Texel. In determining whether these companies produce identical or substitutable fabrics, the Tribunal focussed its attention on the two prototype samples containing polyester, rayon and wool fibres, as they were composed of the same fibres as the subject fabric. The Tribunal was guided by factors such as technical description, quality, availability and price.

On the basis of the CCRA's analysis, the Tribunal accepts that two of the prototype samples submitted by Doubletex and Texel have a similar technical composition to that of the subject fabric, i.e. they contain similar or identical amounts of polyester, rayon and wool fibres. The Tribunal notes, however, that the CCRA indicated in laboratory reports regarding these two samples that "[t]he weight of this felt is not

uniform and varies considerably depending on what part of the felt is weighed".¹² With respect to the Doubletex sample, the CCRA found that the weight varied between 77 g/m² and 102 g/m². With respect to the Texel sample, the CCRA determined that the weight varied between 63 g/m² and 74 g/m², well below the weight of 85 g/m² indicated by Texel. Peerless submitted two affidavits signed by witnesses testifying that these samples were not acceptable because they are of inferior quality, have serious inconsistencies, in that they have thick and thin spots, and have varying degrees of fibre migration.¹³ The Tribunal's own examination of these two samples and the subject fabric also supports the conclusion that they are not identical or substitutable.

Peerless also submitted that Doubletex and Texel had not provided any evidence to establish that they can make an acceptable product available in reasonable commercial quantities to supply the market demand for the subject fabric. On this point, the Tribunal notes that Canada Pad indicated that it began to purchase the subject fabric five years ago from Italy because of the superior qualities demanded by high-end men's apparel manufacturers. Canada Pad stated that, during the last three years,¹⁴ potential Canadian textile producers had not approached it with product offerings similar or identical to the goods that it imports from Italy. The Tribunal believes that, if Doubletex or Texel were making concrete plans to enter the market for this type of fabric, they would have taken a more aggressive approach in promoting and demonstrating their capability to produce identical or substitutable fabrics. According to Canada Pad, it would appear that the men's fashion business is moving from heavier and stiffer chest pieces to lighter and softer chest pieces.¹⁵ However, with respect to needleloom felt, it seems that Texel's business strategy has been to focus on mainstream products. Although Doubletex has provided some evidence of a capability to produce needleloom felt, it appears to the Tribunal that its main focus has also been on the production of felt used in sectors other than men's jackets and blazers.

Based on the evidence, the Tribunal concludes that there is presently no domestic production of high-quality needleloom felt containing wool fibres for use as chest pieces. Given the demands of the fashion market, the Tribunal is persuaded that, even in the absence of tariff relief, Peerless would likely shift its purchases from the lower-quality domestic needleloom felt to the higher-priced offshore goods. Hence, Texel is likely to lose sales regardless of whether tariff relief is granted. With respect to Doubletex, given that it does not currently produce fabrics identical to or substitutable for the subject fabric, the Tribunal does not consider that it would lose any sales if tariff relief were granted.

The Tribunal also notes that the landed cost of the subject fabric is significantly higher than the proposed average selling price of the allegedly identical or substitutable fabrics, i.e. the samples containing wool fibres submitted by Doubletex and Texel.¹⁶ Doubletex and Texel would, therefore, retain a significant price advantage even if the tariff on the imported fabrics were removed. Consequently, the Tribunal is of the view that, should domestic textile producers become able to offer products that are directly substitutable for the subject fabric, in commercially available quantities, they will be in a good competitive position to seek a share of the market.

12. Tribunal Exhibit TR-2002-002-15A, Administrative Record, Vol. 1 at 69.5; Tribunal Exhibit TR-2002-002-16A, Administrative Record, Vol. 1 at 71.6.

13. Tribunal Exhibit TR-2002-002-19, Administrative Record, Vol. 5 at para. 9; Tribunal Exhibit TR-2002-002-19, Administrative Record, Vol. 5 at paras. 16, 17, 18.

14. Tribunal Exhibit TR-2002-002-19, Administrative Record, Vol. 5 at paras. 8, 12, 13.

15. *Ibid.* at para. 4.

16. Tribunal Exhibit TR-2002-002-18 (protected), Administrative Record, Vol. 2 at 24.

On the basis of the information provided to the Tribunal, tariff relief would provide yearly benefits in excess of \$50,000 to Peerless and other users of the subject fabric. This tariff relief would provide benefits to users of the subject fabric in the form of reduced costs, which could translate into benefits to the consumer in terms of lower prices. As for the costs to the producers, given that they do not produce identical or substitutable fabrics in commercially available quantities, the Tribunal sees little cost if tariff relief is granted. Given that the domestic industry says that it can provide identical or substitutable fabrics to users at prices lower than the landed cost of the subject fabric, tariff relief should not reduce the incentive for the domestic industry to undertake the necessary investment to be capable of supplying identical or substitutable fabrics to domestic clothing manufacturers.

With respect to 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.¹⁷ Peerless has provided no evidence to warrant such a recommendation.

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 needleloom felt, not impregnated, coated, covered or laminated, containing 10 percent or more of wool or fine animal hair, of subheading No. 5602.10, for use as chest pieces between the lining and outer fabric in the manufacture of men's jackets (including suit jackets) and blazers.

Patricia M. Close

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Presiding Member

Zdenek Kvarda

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Ellen Fry

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17. See, for example, *Re Request for Tariff Relief by Doubletex* (3 July 2002), TR-2000-006 at 8 (CITT); *Re Request for Tariff Relief by Ballin* (9 March 2001), TR-2000-004 at 6 (CITT); *Re Request for Tariff Relief by Tantalum Mining* (21 March 2001), TR-2000-003 at 4 (CITT); *Re Request for Tariff Relief by Majestic Industries* (12 January 2001), TR-2000-002 at 4 (CITT).