

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
PEERLESS CLOTHING INC.
REGARDING
CERTAIN WOVEN FABRICS OF COMBED WOOL**

OCTOBER 1, 2001

PEERLESS CLOTHING INC.

REQUEST NO. TR-2000-005

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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 November 1, 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 certain woven fabrics of combed wool, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers. Peerless also sought tariff relief retroactive to September 1, 2000.

On January 24, 2001, 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 fabrics under investigation were described in the notice as "woven fabrics, solely of combed wool or mixed solely with cotton, silk or man-made fibres, containing 95 percent or more by weight of worsted wool having an average fibre diameter of 18.5 microns or less, of a weight not exceeding 220 g/m², of tariff item No. 5112.11.90, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers" (the subject fabrics).

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. A request for information was also sent to potential users and importers of the subject fabrics. A letter was sent to the Canada Customs and Revenue Agency (CCRA) requesting a complete description of the physical characteristics of the samples submitted by Peerless, an opinion on whether the tariff relief is administrable, and 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 Cleyn & Tinker Inc. (Cleyn & Tinker)³ filed submissions with the Tribunal.

On May 25, 2001, the Tribunal gave Cleyn & Tinker the opportunity to submit comments on affidavits contained in Peerless's submission. The Tribunal received Cleyn & Tinker's comments on May 30, 2001.

In its response submission of May 24, 2001, Peerless raised the possibility of holding a public hearing for this investigation. However, the Tribunal determined that there was sufficient evidence on file to address the relevant issues in the present case.

1. R.S.C. 1985 (4th Supp.), c. 47.

2. C. Gaz. 2001.I.288.

3. Following a request made by the Canadian Textiles Institute, on behalf of Cleyn & Tinker, the Tribunal granted permission to Cleyn & Tinker to file a late submission (received May 14, 2001) with respect to the investigation.

PRODUCT INFORMATION

The subject fabrics are fine worsted fabrics,⁴ imported from various countries including Italy, the Republic of Korea (Korea) and Turkey, which are used in the manufacture of men's suits, jackets, blazers, vests and trousers. Peerless performs the entire cutting, sewing, finishing and quality control of end products at its facility in Montréal, Quebec.

As of January 1, 2001, the subject fabrics, classified for customs purposes under tariff item No. 5112.19.91⁵ of the schedule to the *Customs Tariff*,⁶ are dutiable under the MFN tariff at 16 percent *ad valorem* (but not to exceed \$4.58/kg), and are 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.⁷

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 claimed that there are no identical or substitutable fabrics available from Canadian textile producers. Peerless alleged that no one in Canada makes woven fabrics of combed wool with an average fibre diameter of 17.5 microns or less. Peerless stated that there is purportedly some production of worsted wool with an average fibre diameter of 18.5 microns, but that it is certainly not in sufficient volumes or in a sufficient variety of styles, patterns or colours to meet the requirements of Canadian apparel manufacturers. According to Peerless, the subject fabrics have a finer hand or feel than do wool fabrics with an average fibre diameter exceeding 18.5 microns.

Peerless pointed out that, in Canada, there is only one textile mill, namely, Cleyn & Tinker, that produces a variety of worsted fabrics, the vast majority of which are not fabrics with an average fibre diameter of 18.5 microns or less. Peerless stated that, because Cleyn & Tinker's total production is approximately 5.62 million square metres, Cleyn & Tinker could not meet the demand for the subject fabrics.

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4. According to the *Dictionary of Fiber & Textile Technology*, 3d ed. (Charlotte, NC: Hoechst Celanese, 1990), worsted fabrics are made from worsted yarns and are tightly woven with a smooth, hard surface.
 5. Tariff item No. 5112.11.90, used in the notice of commencement of investigation, is for fabrics of a weight not exceeding 200 g/m².
 6. S.C. 1997, c. 36.
 7. Because the customs duty payable on imports of fabrics under tariff item No. 5112.11.90 or 5112.19.91 cannot exceed \$4.58/kg, the effective tariff rate is typically about 7 percent (based on the information submitted in response to the Tribunal's questionnaires).

Peerless indicated that fine worsted fabrics are part of a fashion trend and, therefore, are in high demand. Peerless submitted that the removal of the customs duty on imports of the subject fabrics would reduce its costs, allow it to compete more effectively in Canada and in foreign markets and enable it to increase its market share. Peerless stated that benefits would be passed on to the consumer. In addition, Peerless argued that tariff relief would offset some of the potential problems associated with the modifications to the duty drawback program.⁸ In this regard, Peerless indicated that it no longer gets a drawback for the imported fabrics that it uses for its apparel exported, under Canadian TPLs, to the United States and that, as such, the modifications could seriously damage this export business.

Peerless also indicated that under U.S. legislation, the *Trade and Development Act of 2000*, a large quantity of worsted wool fabrics, with an average fibre diameter of 18.5 microns or less, is now dutiable at 6 percent when imported into the United States. Peerless stated that this gives a distinct new advantage to U.S. apparel manufacturers against whom Peerless competes in North America.

In its response submission, Peerless submitted that, although Cleyn & Tinker has provided some evidence of the capability to produce fabrics that are similar to the subject fabrics, they are not all exactly identical in a physical sense. Peerless stated that, more importantly, the allegedly identical fabrics are not available in reasonable commercial quantities. In this regard, Peerless indicated that none of the fabric samples submitted by Cleyn & Tinker have an average fibre diameter as low as 16.9 microns as does sample 575C submitted by Peerless, nor are they available in the range of designs and colours represented in the samples submitted by Samuelsohn Ltd. (Samuelsohn). Peerless pointed out that, even presuming that Cleyn & Tinker does make identical fabrics, the evidence is that it does not intend and is not able to supply the market demand for the subject fabrics in Canada. This, according to Peerless, is reinforced by the fact that, except in one minor case, none of the major purchasers of the subject fabrics have ever purchased such fabrics from Cleyn & Tinker or even knew that Cleyn & Tinker made such fabrics. Peerless also stated that the evidence shows that Cleyn & Tinker has a high minimum order requirement and will not sell in quantities as low as 50 to 75 square metres.

Peerless submitted that, although it can be argued that the fabrics produced by Cleyn & Tinker are substitutable for the subject fabrics, given that some contain worsted wool having an average fibre diameter of between 18.0 and 18.5 microns, they are not, in fact, substitutable for the subject fabrics. Peerless submitted that substitutability depends on several factors, including the technical nature of the fabric, the quality of the fabric, the price, the market acceptance and the availability of supply. Moreover, Peerless indicated that, as stated in Request No. TR-98-019,⁹ the fashion industry attaches considerable importance to even small differences between fabrics, which allows it to offer distinctive new products.

In sum, Peerless submitted that the fabrics produced by Cleyn & Tinker are not substitutable for the subject fabrics because they (1) do not have the variety of designs and colours needed to qualify as substitutable fabrics, (2) are not produced in sufficient volumes to meet the demands of the Canadian market and (3) are not provided on the basis of acceptable commercial terms. In support of this claim, Peerless filed

8. Under the *North American Free Trade Agreement* (NAFTA), a duty refund system called “the lesser-of concept” replaced the drawback regulations for Canada-United States trade. Under this scheme, 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 tariff preference levels (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.

9. *Re Request for Tariff Relief by Tribal Sportswear* (24 August 1999) (CITT).

a sworn affidavit from an official of its company, as well as three other sworn affidavits from representatives of S. Cohen Inc. (Cohen), Samuelsohn and Jack Victor Limited (Jack Victor).

With respect to the lack of variety of designs and colours of the allegedly substitutable fabrics, Peerless stated that merchandise buyers are fashion conscious and place considerable importance on the quality of the fabric, design, colours and hand of the fabric. Peerless pointed out that only fabrics that are yarn dyed can have more intricate designs and patterns. In this connection, Peerless indicated that the samples provided by Cleyn & Tinker are, for the most part, of similar construction and are solid, single-colour fabrics, given that they are piece dyed. This, according to Peerless, indicates that Cleyn & Tinker has a very narrow selection of fabrics to offer men's apparel manufacturers.

Peerless also stated that Cleyn & Tinker's piece dyed fabrics do not meet the demands of the men's apparel market, which wants the subject fabrics that provide a finer quality feel and look and can be worn year-round. In addition, Peerless stated that any producer of fabrics must show a very broad range of designs, patterns and colourways¹⁰ in order to be able to sell to various garment manufacturers. In this regard, Peerless indicated that Canadian men's apparel manufacturers are presented with thousands of samples of the subject fabrics from the many textile mills that produce these fabrics. Peerless submitted that this allows apparel manufacturers to offer garments made from unique and exclusive fabrics. Peerless pointed out that no one textile mill can provide all the necessary variety, since all textile mills focus on a limited range of fabrics. Peerless submitted that the fact that Cleyn & Tinker has only been able to make, or only intends to make, some 20 fabric designs is indicative of its inability to meet all the needs of the Canadian apparel manufacturers or to be truly competitive.

In regard to the volumes of the allegedly substitutable fabrics, Peerless indicated that Cleyn & Tinker's actual production and sales of these fabrics are low and, therefore, completely insufficient to meet the needs of men's apparel manufacturers. Furthermore, Peerless submitted that, given the existing and increasing demand for the subject fabrics, Cleyn & Tinker would have produced, marketed and sold a much higher volume of the allegedly substitutable fabrics had it been seriously in pursuit of this segment of the fabric market. Peerless indicated that it and other Canadian men's apparel manufacturers, some of which are currently important customers of Cleyn & Tinker, have not been offered the allegedly substitutable fabrics because it is not commercially feasible for Cleyn & Tinker to make and sell such fabrics. Peerless stated that it and other Canadian apparel manufacturers would prefer to buy identical or substitutable fabrics from a North American source, such as Cleyn & Tinker, as it would eliminate import duty issues and NAFTA-origin issues on garments exported to the United States. Peerless pointed out that, given the new legislative provisions in the United States concerning imports of fabrics, yarns and wool with an average fibre diameter of 18.5 microns or less, there is a greater incentive to obtain fabrics from NAFTA sources. Peerless indicated that, due to the commercial cost realities of producing identical or substitutable fabrics, it is not credible to think that Cleyn & Tinker could supply the needs of Canadian men's apparel manufacturers.

As for the commercial terms of the allegedly substitutable fabrics, Peerless submitted that these are unacceptable because Cleyn & Tinker has very high minimum quantity requirements. Peerless indicated that the subject fabrics can be purchased in very small quantities for sampling and production. Peerless also pointed out that Cleyn & Tinker does not have the ability to provide the quick sampling and brand labelling that are available from foreign textile mills.

10. A combination of colours used in a printed pattern. The same pattern can be produced in several different colourways.

Peerless submitted that tariff relief would maximize economic benefits to Canada, in that men's apparel manufacturers would have full access to an immense variety of the subject fabrics at a reduced cost of approximately \$3.2 million per year. This, according to Peerless, would allow manufacturers to maintain and enhance their competitive position in the Canadian and U.S. markets and would create the potential for them to pass on savings to consumers and to increase production and employment. With respect to the U.S. market, Peerless submitted that part of the men's apparel manufacturers' competitiveness was adversely affected by the recent decrease in U.S. tariff rates for certain quantities of worsted wool fabrics with an average fibre diameter of 18.5 microns or less, which lowered costs for U.S. garment manufacturers sourcing the subject fabrics from non-NAFTA countries. In this context, Peerless indicated that tariff relief would, in part, counter this adverse effect and, while it is possible that the United States could further reduce duty rates on the fabrics if Canadian duty rates are lowered, such a reduction is not automatic and requires presidential proclamation.

Peerless submitted that the granting of tariff relief on the subject fabrics would not adversely affect Cleyn & Tinker, since it will not lose sales and Canadian men's apparel manufacturers will continue to purchase significant amounts of non-subject fabrics from Cleyn & Tinker. Furthermore, Peerless submitted that the evidence is clear that Cleyn & Tinker is not focused in any manner on supplying Canadian men's fine clothing manufacturers with identical or substitutable fabrics. Peerless explained that certain statements made by Cleyn & Tinker in its submission of May 14, 2001, to the Tribunal are not correct or can be potentially misconstrued. Finally, Peerless submitted that a public hearing should be held, should the Tribunal have any hesitancy about recommending the requested tariff relief.

Ballin Inc. (Ballin)

Ballin, of Ville Saint-Laurent, Quebec, was founded in 1946. It manufactures men's trousers and shorts, as well as women's sportswear. The company is privately owned and employs in excess of 700 people. Ballin supported Peerless's request for tariff relief. It submitted that identical or substitutable fabrics are not produced in Canada and that paying duties on these fabrics puts the company at an unfair disadvantage to compete internationally.

Ballin claimed that there are no identical or substitutable fabrics available from Canadian textile producers. Ballin alleged that Cleyn & Tinker produces a variety of worsted fabrics, the vast majority of which are not fabrics with an average fibre diameter of 18.5 microns or less. Ballin also stated that it buys all the fabrics that it can from Cleyn & Tinker, based on the products available.

Ballin indicated that worsted fabrics are part of a fashion trend and are, therefore, in high demand. Ballin indicated that price and quality are of the utmost importance in today's market. Ballin stated that competition in the apparel industry is fierce and that tariff relief could allow it to stay competitive and save and maintain jobs in Canada, and possibly permit it to increase its domestic and foreign market shares. Ballin stated that, if it cannot respond to the demand for apparel made with the subject fabrics, this demand will be supplied by imports of finished goods.

Barmish Inc. (Barmish)

Barmish, of Ville Saint-Laurent, Quebec, a manufacturer of men's trousers and shorts, indicated that it supports Peerless's request for tariff relief. Barmish stated that, in order to compete effectively in the Canadian and U.S. markets, it needs to use the subject fabrics in the production of trousers. Barmish alleged that it is unfair to Canadian apparel manufacturers to pay duties on the subject fabrics when identical or substitutable fabrics are not available in Canada.

Barmish stated that, even if identical fabrics were available domestically, textile producers would not be in a position to provide the necessary turnaround time for large programs. Barmish indicated that, in some cases, the customer chooses the subject fabrics and that Barmish is required to make a quote on programs using these specific fabrics. According to Barmish, even if such fabrics were available in Canada, it would not be able to substitute them.

Barmish indicated that Cleyn & Tinker, in the last five years, has not been able to produce fabrics identical to the subject fabrics. Barmish indicated that, on many occasions, Cleyn & Tinker has been asked to develop fabrics of the same nature as the subject fabrics, but that Cleyn & Tinker's capabilities are limited. Barmish submitted that its future growth is dependent on its ability to supply trousers made with finer fabrics so as to remain competitive with U.S. firms that have just had the rates of duty reduced significantly on imports of fine worsted wool fabrics.

Barmish stated that the market is very price sensitive and that it is difficult to compete against U.S. and other foreign manufacturers on certain programs. In this regard, Barmish indicated that tariff relief would be beneficial because it would allow it to quote on U.S. orders and maintain or increase business.

Copley Apparel Group (Copley)

Copley, of Hamilton, Ontario, a manufacturer of high-end men's apparel that employs 600 people, supported Peerless's request for tariff relief. Copley indicated that tariff relief would enable it to maintain its position in a highly competitive business environment and make it more competitive in the U.S. and European markets, thereby increasing sales. Copley stated that this, in turn, would help protect Canadian jobs in Hamilton. Copley indicated that benefits would be passed on to the consumer.

Jack Victor

Jack Victor, of Montréal, Quebec, a manufacturer of men's fine clothing, stated that it supports Peerless's request for tariff relief because men's wear made with the subject fabrics is in high demand and that identical or substitutable fabrics are not available in Canada.

Jack Victor stated that, because of their physical characteristics, the subject fabrics are more receptive to the finishing processes involved in the production of fine clothing. Jack Victor indicated that this, in turn, provides a touch and appearance that are in great demand in the market for better men's suits. Jack Victor submitted that domestic substitutable fabrics lack the quality, hand, finish, and leading-edge designs, colours and pattern work of the subject fabrics, which are essential in a fashion-driven industry.

Jack Victor submitted that it has viewed the fabric collections of domestic textile producers within the last six months and, as a result, has added some of their plain fabrics to its product line. Jack Victor alleged, however, that these fabrics were not comparable to the subject fabrics in terms of designs, patterns and colouration, and were inferior to the European offerings.

Jack Victor stated that the modifications to the duty drawback program have adversely affected its input costs. Jack Victor indicated that tariff relief would allow it greater downward flexibility in pricing and allow it to be more competitive, especially in the U.S. market where U.S. manufacturers have recently benefited from drastic reductions in the import duties that they pay for fine worsted fabrics.

Jo/Ri Incorporated (Jo/Ri)

Jo/Ri, of Montréal, Quebec, an importer and distributor of fabrics, indicated that it occasionally imports a small amount of the subject fabrics. Jo/Ri supported Peerless's request for tariff relief, as it would enhance the competitiveness of Canadian garment manufacturers in Canada and in export markets.

Samuelsohn

Samuelsohn, of Montréal, Quebec, a manufacturer of high-quality men's clothing since 1923, supported Peerless's request for tariff relief. Samuelsohn submitted that it uses the subject fabrics extensively and that the demand for men's clothing made with these fabrics is growing, especially in the U.S. market. Samuelsohn indicated that, should tariff relief not be granted, it would become increasingly difficult to compete in this market because U.S. authorities have reduced the tariff on imported fine worsted fabrics.

Samuelsohn stated that identical or substitutable fabrics are not available in Canada and that the subject fabrics have a finer and more luxurious feel, as well as unique colouring, which is attributable to special dyeing techniques applied by foreign manufacturers. Samuelsohn also indicated that it is able to purchase the subject fabrics in small quantities and within acceptable delivery standards versus the requirement to purchase large minimum quantities from domestic producers, which is not acceptable except in a very limited number of cases. In this regard, Samuelsohn stated that, in the past, it has considered domestic fabrics as "additions" to its product line, but that experience has shown that domestic producers cannot supply them in any commercially reasonable manner because of required minimum quantities. Consequently, Samuelsohn indicated that it no longer considers domestic fabrics to be an option.

Samuelsohn submitted that the removal of the customs duty on imports of the subject fabrics would allow it to compete more effectively with European and U.S. manufacturers, primarily in the U.S. market. Samuelsohn stated that any savings in raw material costs would serve to offset increases in production costs and/or would be passed on to the consumer. Samuelsohn indicated that this, in turn, might increase demand for its products, thereby contributing to a rise in production and increased employment.

Cohen

Cohen, of Ville Saint-Laurent, Quebec, a manufacturer of men's apparel since 1923, also supported Peerless's request for tariff relief. Cohen stated that there are no identical or substitutable fabrics available from Canadian textile producers and that the subject fabrics have a finer hand or feel than do wool fabrics with an average fibre diameter exceeding 18.5 microns. Cohen indicated that tariff relief would allow it to remain competitive and respond to a demand for apparel made with the subject fabrics. Cohen also agreed with Peerless's claims with respect to anticipated benefits, should tariff relief be granted.

Weston Apparel Manufacturing (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 stated that identical or substitutable fabrics are not available from Canadian sources. Weston alleged that there are no identical or substitutable fabrics available from Canadian textile producers. Weston claimed that no one in Canada makes woven fabrics of combed wool with an average fibre diameter of 17.5 microns or less. Weston stated that there is purportedly some production of worsted fabrics with an average fibre diameter of 18.5 microns, but that it is certainly not in sufficient volumes or in a sufficient variety of styles, patterns or colours to meet the requirements of

Canadian apparel manufacturers. According to Weston, the subject fabrics have a finer hand or feel than do wool fabrics with an average fibre diameter exceeding 18.5 microns.

Weston stated that tariff relief would allow it to stay competitive in the marketplace and would offset some of the potential problems associated with the modifications to the duty drawback program. Moreover, Weston indicated that under the *Trade and Development Act of 2000*, a large quantity of worsted wool fabrics, with an average fibre diameter of 18.5 microns or less, is now dutiable at 6 percent when imported into the United States. Weston stated that this gives a distinct new advantage to U.S. apparel manufacturers against whom Weston competes in North America.

Textile Industry

Cleyn & Tinker

Cleyn & Tinker, of Huntingdon, Quebec, was founded in 1930 and is the second largest manufacturer in North America of wool and wool blend products using the worsted system. It employs over 700 people, of whom 600 are located in Canada. Cleyn & Tinker exports over 65 percent of its products, including the allegedly identical or substitutable fabrics, mostly to the United States, but an increasing amount of its production is now being sold to Hong Kong, Thailand, the Caribbean Basin and Europe. Cleyn & Tinker stated that it has made significant investments during the last decade, which have permitted the company to produce a wide variety of fabrics.

Cleyn & Tinker indicated that, over the last several years, the demand for finer fabrics has increased and, as a result, the company has followed this change so that virtually all its production is now based on wool fibres that are in the 18 to 21 micron range. Cleyn & Tinker opposed Peerless's request because, should tariff relief be granted, it would have a negative impact on the company's profitability.

Cleyn & Tinker explained that, with the implementation of the *Trade and Development Act of 2000*, the U.S. authorities have sought to counter the effects of the amount of TPLs granted to Canadian apparel manufacturers under NAFTA. Cleyn & Tinker indicated that the U.S. general tariff rate of 6 percent *ad valorem* is still higher than the effective Canadian tariff rate on the subject fabrics. Furthermore, Cleyn & Tinker alleged that the U.S. authorities would match any further reduction in the Canadian general tariff rate;¹¹ this would, in turn, have a negative impact on its sales in the U.S. market. According to Cleyn & Tinker, Peerless would obtain no additional advantage since the U.S. apparel manufacturers would have an automatic reduction of their tariff rates to zero, should Canada remove the tariff on the subject fabrics.

Cleyn & Tinker stated that the international competition that Peerless faces in the United States is still subject to significant tariffs and that, as such, Peerless, which benefits from duty-free access to the United States under TPLs, is shielded from competition from imported suits.

Cleyn & Tinker submitted that Peerless already benefits from tariff relief under the textile reference and that, therefore, it is reasonable to assume that the benefit to Peerless is capped, since the annual amount of TPLs that Peerless can export to the United States free of duty is limited to 5 million square metres. Cleyn & Tinker stated that, on the other hand, the harm to its company would be much greater than Peerless's

11. Section 501(b)(2) of Title V of the *Trade and Development Act of 2000* authorizes the President of the United States to proclaim a reduction in the rate of duty applicable to imports of worsted wool fabrics classified under tariff item No. 9902.51.12 that is necessary to equalize such a rate of duty with the MFN rate of duty applicable to imports of such worsted wool fabrics into Canada.

gain, since tariff relief would directly or indirectly impact a certain portion or the total range of fabrics that it makes and sells in Canada and the United States.

Finally, Cleyn & Tinker stated that the Tribunal has consistently failed to take into account the full cumulative impact of past decisions with respect to the textile reference. According to Cleyn & Tinker, each decision recommending tariff relief has put pressure on Cleyn & Tinker's margins and threatens the company's viability and the livelihood of its 700 employees. Cleyn & Tinker indicated that, should tariff relief be granted, it would undermine the benefits that it enjoys under NAFTA and put pressure on profit margins with respect to its export sales to the United States. Cleyn & Tinker stated that it fails to see how the requested tariff relief will benefit Canadian consumers.

In its submission of May 14, 2001, Cleyn & Tinker argued that the effective Canadian tariff rate on the subject fabrics is less than 7 percent, due to the cap of \$4.58/kg. Cleyn & Tinker stated that the U.S. rate of 6 percent was introduced by the U.S. government in order to equalize the U.S. and Canadian tariff rates on fabrics made of worsted wool having an average fibre diameter of 18.5 microns or less. Cleyn & Tinker claimed that its total annual production is 12.5 million square metres of all fabrics rather than the 5.625 million square metres alleged by Peerless and others.¹² It stated, therefore, that it has the manufacturing capacity to produce over four times the total imports of the subject fabrics.¹³

Cleyn & Tinker pointed out that it produces, in commercial quantities, a significant range of fabrics of 100 percent worsted wool having an average fibre diameter of 18.0 microns or more. Cleyn & Tinker indicated that it is currently selling fabrics which have an average fibre diameter of less than 18.5 microns to Jack Victor. Cleyn & Tinker stated that, at this time, it does not manufacture fabrics of worsted wool having an average fibre diameter of 17.5 microns or less.

As to the claim of Peerless and other suit manufacturers that, if tariff relief on the subject fabrics is not granted, they could lose business in the United States to imports of foreign suits, Cleyn & Tinker submitted that foreign (non-NAFTA) suits are fully dutiable at the regular U.S. MFN rate of duty, which, in the case of suits made from fabrics of 100 percent worsted wool having an average fibre diameter of 18.5 microns or less, is 18.6 percent plus 15.9¢/kg. On the other hand, suits made by Canadian producers enter the U.S. duty free under NAFTA TPLs. According to Cleyn & Tinker, Canadian suit makers have a substantial advantage over the foreign suit makers in the U.S. marketplace. Moreover, Cleyn & Tinker indicated that, if for any reason TPLs are unavailable and a Canadian suit maker has to pay regular U.S. MFN rates of duty, the suit maker can claim full duty drawback on its imported fabrics and that, therefore, tariff elimination on imported fabrics is irrelevant in this context.

Cleyn & Tinker questioned Peerless and other suit makers' claim that recent U.S. legislation reducing U.S. duties on worsted wool fabrics gives their U.S. competitors a "distinct new edge". In this respect, Cleyn & Tinker indicated that the new U.S. rates are not lower than existing Canadian rates on these fabrics. According to Cleyn & Tinker, Canadian suit makers are wrong in believing that reducing Canadian duties on these fabrics to zero will restore a Canadian advantage. On this point, Cleyn & Tinker indicated that U.S. legislation incorporates a provision that allows the President to reduce U.S. duties to zero, if Canadian rates are similarly reduced. Cleyn & Tinker submitted that reducing the already low Canadian tariff on the subject fabrics would accomplish nothing for Canadian suit makers vis-à-vis their

12. Tribunal Exhibit TR-2000-005-13.3 at 2.

13. The Tribunal takes this to mean over 12 million square metres, basing its conclusion on replies to Tribunal questionnaires that indicate that the total volume of imports of the subject fabrics for the period from October 1, 1999, to September 30, 2000, was 3.1 million square metres.

U.S. competitors or their foreign competitors in the U.S. marketplace. Conversely, Cleyn & Tinker claimed that tariff relief would seriously compromise its own overall operations and the continued development, production and sales of wool fabrics with lower fibre diameters.

Victor Woolen Products, Ltd. (Victor)

Victor, of Saint-Victor, Quebec, a producer of woven fabrics of carded yarns that employs over 400 people, opposed the request for tariff relief on woven fabrics of combed wool. Victor stated that it does not produce identical or substitutable fabrics, but that one of its subsidiaries in the United States, namely, Victor Forstmann, Inc., produces such fabrics.

Victor indicated that, until recently, Canadian apparel manufacturers had a distinct advantage under TPLs when exporting goods to the United States and Mexico using non-NAFTA fabrics, but that the U.S. government had reduced tariffs on certain worsted wool fabrics so as to maintain the competitiveness of its clothing industry. Victor stated that any reduction in Canadian tariffs on the subject fabrics would result in a similar action by the U.S. authorities. Victor also submitted that it must already adjust to the new rules of the *Caribbean Basin Trade Partnership Act*, which hinders its access to the U.S. market.

OTHER INFORMATION

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada maintains quota restraints on combed wool and fine animal hair woven fabrics, including any woven fabrics mixed mainly or solely with wool and fine animal hair (sub-category 31.1), imported from Bulgaria, the People's Republic of China, the Czech Republic, India, the Republic of Poland, Romania, the Slovak Republic, Korea, Chinese Taipei and Uruguay. Accordingly, this coverage includes the subject fabrics of tariff item No. 5112.11.90 or 5112.19.91.

DFAIT also indicated that it would consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove customs duties on the basis of non-availability. Ex-quota treatment will only be granted in cases where it can be demonstrated that there is an extra charge for using products under quota or where goods are not otherwise available in Canada.

The CCRA indicated that there would be some additional costs, over and above those normally incurred by it, to administer the tariff relief, should it be granted. The cost to determine the fibre diameter in microns is approximately \$150 per fabric sample.

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 for tariff relief covers woven fabrics containing 95 percent or more by weight of combed wool having an average fibre diameter of 18.5 microns or less. In essence, Peerless claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabrics and that only one textile mill produces a variety of worsted wool fabrics, the vast majority of which are not fabrics with an

average fibre diameter of 18.5 microns or less. Other major manufacturers of men's apparel supported these views.¹⁴ Two domestic textile mills, namely, Cleyn & Tinker and Victor, opposed this request. Cleyn & Tinker argued that it makes a wide range of identical or substitutable fabrics of worsted wool with an average fibre diameter of 18.0 microns or more and that it serves the same end uses. Victor indicated that, although it does not produce identical or substitutable fabrics, one of its subsidiaries in the United States, Victor Forstmann, Inc., produces such fabrics.

The clothing industry indicated that, in the mid- to high-end segment of the fine clothing market in which the subject fabrics are used, men's apparel manufacturers must stay abreast of the changing fashion trends and needs of customers in order to succeed and remain competitive. In this regard, the quality, pattern, colour and hand of the fabric are critical elements considered by merchandise buyers in a given fashion season. The Tribunal concurs that the ability for Peerless and other Canadian men's apparel manufacturers to access a variety of fabrics from domestic and foreign sources plays an important role in the domestic clothing industry's success and position in the market.

Against this background, the Tribunal examined the issues of (1) Cleyn & Tinker's ability to supply fabrics that are identical to or substitutable for the subject fabrics, (2) the impact of tariff relief on Cleyn & Tinker and any other Canadian producer, and (3) the net economic benefits to Canada of tariff relief.

In determining whether Cleyn & Tinker produces identical or substitutable fabrics, the Tribunal was guided by factors such as technical description, quality, availability of supply and price.

In the present case, Cleyn & Tinker provided samples of 1 piece dyed worsted fabric having an average fibre diameter of 17.1 microns and weighing 221 g/m², 13 piece dyed worsted fabrics having an average fibre diameter ranging from approximately 18.2 to 19.6 microns and weighing less than 200 g/m² and 2 yarn dyed worsted fabrics having an average fibre diameter of 18.2 microns and weighing less than 166 g/m².¹⁵ The Tribunal accepts that Cleyn & Tinker makes some fabrics of the same technical composition as that of the subject fabrics and that these fabrics are sold to Canadian manufacturers of men's wear. Although some of Cleyn & Tinker's fabrics and the subject fabrics have similar technical descriptions, the Tribunal agrees with Peerless that, in order to satisfy the retail industry, apparel manufacturers must have access to a very broad range of designs, patterns and colourways so that they are able to offer garments made from unique and exclusive fabrics.

Based on the record, it is evident that no one textile mill can provide all the necessary variety in the men's apparel sector since, in general, textile mills tend to focus on a certain range of fabrics. In order to obtain, every fashion season, new colours and designs that will satisfy the retail industry, the Tribunal is of the view that, in the present case, men's apparel manufacturers must have access to a sufficient range of fabrics from a wide range of mills. On this point, Cohen remarked that "[m]ost of the [Cleyn & Tinker] samples are one solid colour and many are variants of each other. . . . No one textile mill could meet the needs of S. Cohen for all of its fabric needs."¹⁶ Samuelsohn stated that it must purchase high-quality fabrics from a variety of textile mills around the world in order to have the quality and variety needed for each fashion season and that one mill cannot produce the range of fabrics with varying designs and colourways

14. See the section on representations made by the clothing industry.

15. Samples were not provided for fabric Nos. 21229, 24436 and 24437 referred to in Cleyn & Tinker's product list (Tribunal Exhibit TR-2000-005-13.3 at 4). No product description was provided for fabric sample No. 22222, and Cleyn & Tinker did not specify whether fabric sample No. 24413 was piece dyed or yarn dyed.

16. Tribunal Exhibit TR-2000-005-36-A, Schedule 1 at paras. 12, 13.

that are required.¹⁷ Jack Victor indicated that Cleyn & Tinker does not have identical or substitutable fabrics in the fancy patterns and colours that are only available from textile mills in Europe and elsewhere other than Canada.¹⁸

Peerless argued that the subject fabrics have a finer hand and feel than do worsted fabrics made from coarser wool fibres. Cohen, Samuelson and Jack Victor also acknowledged that the subject fabrics have a superior hand and feel to the fabrics produced by Cleyn & Tinker.¹⁹ In addition, Cohen stated that the samples submitted by Cleyn & Tinker are, for the most part, piece dyed fabrics as opposed to the subject fabrics that are, principally, yarn dyed.²⁰ In previous cases, the Tribunal has expressed the view that the fashion industry operates on a lower degree of substitutability and, therefore, searches for, and insists on, new fabrics, which are demanded by consumers or expected soon to be.²¹ In other words, the fashion industry attaches considerable importance to even small differences between fabrics that would allow it to offer distinctive new products.

The Tribunal also notes that Cleyn & Tinker is not, to any large extent, in the market of the very fine wool fabrics, but rather in the broader market of wool fabrics with somewhat coarser wool fibres. Cleyn & Tinker indicated that it manufactures, in commercial quantities, a significant range of 100 percent worsted wool fabrics having an average fibre diameter of 18.0 microns or more. In this connection, it pointed out that it is currently selling fabrics that have an average fibre diameter of less than 18.5 microns to Jack Victor.²² However, the Tribunal notes that a very significant portion of Cleyn & Tinker's production and sales is based on worsted wool fabrics containing an average fibre diameter of 19.2 to 21.5 microns.²³ In this regard, the Tribunal notes that Cohen has recently had several meetings with Cleyn & Tinker and, during those meetings, was not at any point shown samples of the allegedly identical or substitutable fabrics.²⁴ Mr. David Wolpin, Vice-President of Merchandising for Peerless, stated, "In all my dealings with [Cleyn & Tinker], both before I joined Peerless and since joining Peerless, [Cleyn & Tinker] has never offered to sell me [the] [s]ubject [f]abrics."²⁵ Jack Victor indicated that it has never knowingly purchased from Cleyn & Tinker the type of fabrics under consideration in the present investigation.²⁶ The Tribunal believes that, if Cleyn & Tinker were seriously considering making inroads in the market for wool fabrics with an average fibre diameter of 18.5 microns or less, it would be taking a more aggressive approach in promoting the allegedly identical or substitutable fabrics.

As noted above, the production and sales of allegedly identical or substitutable fabrics represent a small portion of Cleyn & Tinker's overall activity. Although Cleyn & Tinker has continued to develop finer wool fabrics, it appears that its business strategy has been to focus on mainstream fabrics. Mr. David Wolpin

17. Tribunal Exhibit TR-2000-005-36-A, Schedule 3 at paras. 3, 8.

18. Tribunal Exhibit TR-2000-005-36-A, Schedule 4 at para. 7.

19. Tribunal Exhibit TR-2000-005-36-A, Schedule 1 at para. 6, Schedule 3 at para. 4, Schedule 4 at para. 4.

20. Tribunal Exhibit TR-2000-005-36-A, Schedule 1 at para. 12.

21. *Re Request for Tariff Relief by Ballin* (27 October 1999), TR-97-012 at 13; *Re Request for Tariff Relief by Tribal Sportswear* (24 August 1999), TR-98-019 at 9; *Re Request for Tariff Relief by Château Stores of Canada* (19 September 1995), TR-94-011 and TR-94-019 at 7.

22. In his affidavit (Tribunal Exhibit TR-2000-005-36-A, Schedule 4 at paras. 2, 6), Mr. Tony Iuliani, Vice-President of Merchandising for Jack Victor, indicated that the company never knowingly purchased fabrics from Cleyn & Tinker with an average fibre diameter of less than 18.5 microns. Testing revealed that only one of four fabrics sold to Jack Victor had an average fibre diameter of less than 18.5 microns.

23. Tribunal Exhibit TR-2000-005-25 (protected) at 15-16.

24. Tribunal Exhibit TR-2000-005-36-A, Schedule 1 at para. 10.

25. Tribunal Exhibit TR-2000-005-36-A, Schedule 2 at para. 14.

26. Tribunal Exhibit TR-2000-005-36-A, Schedule 4 at para. 2.

corroborated this, to a degree, when he stated, “[I]ndeed, I have been told on several occasions by representatives of [Cleyn & Tinker] that they leave the fancy or superfine fabrics to other suppliers and want to concentrate and sell to apparel manufacturers their worsted wool fabrics.”²⁷ Therefore, the evidence is clear that Cleyn & Tinker’s main focus is principally on the production of fabrics that do not compete directly with the subject fabrics and, in the Tribunal’s view, this situation is unlikely to change significantly in the near future.

The Tribunal is also of the view that domestic textile producers should be able to demonstrate the ability and willingness to supply both large and small quantities as required, on acceptable commercial terms, as men’s apparel manufacturers in the mid- to high-end segment of the market need the flexibility to buy identical or substitutable fabrics in small quantities. In this regard, Cohen indicated that the minimum purchase order that Cleyn & Tinker will accept for one specific design and colour is generally 420 linear metres. On the other hand, mills in Italy and the United Kingdom accept orders of as little as 50 linear metres for a specific fabric in a specific design and colour.²⁸ Peerless²⁹ and Samuelsohn³⁰ also corroborated this fact.

Finally, the Tribunal also notes that the landed cost of the subject fabrics is, in the vast majority of cases, notably higher than the average selling price of the allegedly substitutable fabrics produced by Cleyn & Tinker.³¹ The fact that importers of the subject fabrics are willing to pay more for a particular fabric tends to support the Tribunal’s view that Cleyn & Tinker’s fabrics are not directly substitutable for or directly competitive with the subject fabrics.

Moreover, the Tribunal notes that, in fiscal years 1999 and 2000, Peerless purchased, respectively, approximately \$1 million and \$2 million of non-subject worsted fabrics from Cleyn & Tinker.³² Cohen indicated that it purchases from Cleyn & Tinker significant volumes of worsted fabrics with an average fibre diameter in excess of 18.5 microns.³³ Samuelsohn indicated that it purchases non-subject worsted fabrics from Cleyn & Tinker that are used to fill a certain price point in its product line.³⁴ Jack Victor also purchased four wool fabrics from Cleyn & Tinker for its trouser division and stated that the one fabric that contained fibres having an average diameter of less than 18.5 microns was not suitable for suits.³⁵ Accordingly, the Tribunal concludes that, should tariff relief be granted, men’s apparel manufacturers would continue to purchase worsted fabrics from Cleyn & Tinker, to the extent possible, because of the obvious benefits of being able to source fabrics from a local producer that satisfy the NAFTA rules of origin requirements.

The Tribunal also recognizes that, as a result of a certain degree of fabric substitutability, there may be some negative impact from tariff relief on Cleyn & Tinker. In this respect, Cleyn & Tinker submitted that tariff relief would seriously compromise the continued development, production and sales of its worsted wool fabrics with lower fibre diameters. In the Tribunal’s view, there is always an advantage to buying from Cleyn & Tinker when possible. If Cleyn & Tinker develops new fabrics with lower fibre diameters, it is in the interest of companies such as Peerless to use those fabrics and save their TPLs. Although some effect

27. Tribunal Exhibit TR-2000-005-36-A, Schedule 2 at para. 11.

28. Tribunal Exhibit TR-2000-005-36-A, Schedule 1 at para. 14.

29. Tribunal Exhibit TR-2000-005-36-A, Schedule 2 at para. 12.

30. Tribunal Exhibit TR-2000-005-36-A, Schedule 3 at para. 6.

31. *Supra* note 23 at 12.

32. Tribunal Exhibit TR-2000-005-36-A, Schedule 2 at para. 13.

33. Tribunal Exhibit TR-2000-005-36-A, Schedule 1 at para. 9.

34. Tribunal Exhibit TR-2000-005-36-A, Schedule 3 at para. 6.

35. Tribunal Exhibit TR-2000-005-36-A, Schedule 4 at paras. 3, 7.

may be borne by Cleyn & Tinker as a result of tariff relief, the Tribunal is of the view that any costs will be substantially outweighed by the benefits to be gained by Peerless and other apparel manufacturers that use these fabrics. The Tribunal is also of the view that Cleyn & Tinker did not provide sufficient evidence in this case to support a conclusion that its overall operations could be seriously compromised. Furthermore, based on an analysis of actual import data, and taking into account the \$4.58/kg cap on the duty, the Tribunal concludes that the actual average effective rate of duty on the subject fabrics in the year 2000 was about 7 percent.³⁶ Therefore, any negative impact that may be felt by Cleyn & Tinker as a result of the requested tariff relief would be much less than the stated MFN rate of 16 percent. In addition, it is the Tribunal's view that any negative impact on Cleyn & Tinker would be mitigated by the likelihood that the majority of the subject fabrics would continue to be priced higher than the Cleyn & Tinker products, even with the tariff removed.³⁷

Cleyn & Tinker argued that any tariff relief on the subject fabrics would be automatically countered by reductions in U.S. tariffs. While the Tribunal recognizes that the *Trade and Development Act of 2000* authorizes the President of the United States to reduce duty rates on worsted wool fabrics, it is not persuaded that those reductions would be as automatic as Cleyn & Tinker alleged. While lower U.S. general tariffs on worsted wool fabrics could make Cleyn & Tinker less competitive in the United States as the MFN rate of its import competitors approaches or equals the NAFTA rate, the effect remains hypothetical and has not been quantified at this stage.

Cleyn & Tinker argued that tariff relief is not necessary for Canadian suit producers to be competitive in the U.S. market because either they can enter the U.S. duty free under NAFTA TPLs, or, if TPLs are not available, they can claim full duty drawback on their imported fabrics (that are used in exported suits). The Tribunal recognizes the benefits of the NAFTA TPLs and duty drawback for Canadian suit makers. It notes, however, that those programs do not help suit producers in the Canadian market. Moreover, in the absence of TPLs, while Canadian suit makers using imported non-NAFTA fabrics may be eligible for duty drawback, such drawbacks, according to Peerless, are not always to the full amount of the duty paid.

Cleyn & Tinker submitted that the Tribunal has consistently failed to take into account the full cumulative impact of past decisions with respect to the textile reference. According to Cleyn & Tinker, each decision recommending tariff relief has put pressure on Cleyn & Tinker's margins and threatens the company's viability and the livelihood of its 700 employees. In assessing requests for tariff relief, the Tribunal is guided by the Minister's terms of reference. In the Tribunal's view, the terms of reference do not call for an examination of the cumulative impact of past cases where tariff relief has been granted. Furthermore, even if they did, the Tribunal is not satisfied that Cleyn & Tinker has presented any compelling evidence of a negative cumulative effect associated with the textile reference.

Victor opposed the request for tariff relief on the grounds that one of its subsidiaries in the United States produces woven fabrics of combed wool. In such cases, 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 decisions in Request Nos. TR-95-009 and TR-2000-001.³⁸

36. *Supra* note 23 at 17.

37. *Supra* note 23 at 12.

38. *Re Request for Tariff Relief by Peerless Clothing* (24 January 2001), TR-2000-001 at 6; *Re Request for Tariff Relief by Peerless Clothing* (12 April 1996), TR-95-009 at 9.

On balance, the Tribunal sees little cost as a result of granting the tariff relief requested by Peerless. On the basis of the information available to the Tribunal, tariff relief would provide yearly benefits to Peerless and other users of the subject fabrics in excess of \$3 million (based on the average effective rate of duty). Tariff relief would also provide benefits to users of the subject fabrics in the form of reduced costs, which could translate into benefits to the consumer in terms of greater choice and lower prices.

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.³⁹ 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 woven fabrics, solely of combed wool or mixed solely with cotton, silk or man-made fibres, containing 95 percent or more by weight of worsted wool having an average fibre diameter of 18.5 microns or less, of a weight not exceeding 220 g/m², of subheading No. 5112.19, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Patricia M. Close
Patricia M. Close
Member

39. See, for example, *Re Request for Tariff Relief by Ballin* (9 March 2001), TR-200-004 at 6; *Re Request for Tariff Relief by Tantalum Mining* (21 March 2001), TR-2000-003 at 4; *Re Request for Tariff Relief by Majestic Industries* (12 January 2001), TR-2000-002 at 4.

Ottawa, Wednesday, October 31, 2001

Request No. TR-2000-005

REPORT TO THE MINISTER OF FINANCE - AMENDMENTS

REQUEST FOR TARIFF RELIEF BY PEERLESS CLOTHING INC. REGARDING CERTAIN WOVEN FABRICS OF COMBED WOOL

In order to rectify omissions that were noticed following distribution, the English version of the Report to the Minister of Finance issued on October 1, 2001, is hereby amended, as follows:

The section entitled "PRODUCT INFORMATION" (page 2) is amended to include tariff item No. 5112.11.90; the section entitled "RECOMMENDATION" (page 15) is amended to include subheading No. 5112.11; and footnote 5 (page 2) is amended to include "and tariff item No. 5112.19.91 is for fabrics weighing between 201 g/m² and 220 g/m²".

These portions of the report now read as follows:

PRODUCT INFORMATION

The subject fabrics are fine worsted fabrics,⁴ imported from various countries including Italy, the Republic of Korea (Korea) and Turkey, which are used in the manufacture of men's suits, jackets, blazers, vests and trousers. Peerless performs the entire cutting, sewing, finishing and quality control of end products at its facility in Montréal, Quebec.

As of January 1, 2001, the subject fabrics, classified for customs purposes under tariff item Nos. 5112.11.90 and 5112.19.91⁵ of the schedule to the *Customs Tariff*⁶ are dutiable under the MFN tariff at 16 percent *ad valorem* (but not to exceed \$4.58/kg), and are 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.⁷

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 fabrics, solely of

4. According to the *Dictionary of Fiber & Textile Technology*, 3d ed. (Charlotte, NC: Hoechst Celanese, 1990), worsted fabrics are made from worsted yarns and are tightly woven with a smooth, hard surface.

5. Tariff item No. 5112.11.90, used in the notice of commencement of investigation, is for fabrics of a weight not exceeding 200 g/m² and tariff item No. 5112.19.91 is for fabrics weighing between 201 g/m² and 220 g/m².

6. S.C. 1997, c. 36.

7. Because the customs duty payable on imports of fabrics under tariff item No. 5112.11.90 or 5112.19.91 cannot exceed \$4.58/kg, the effective tariff rate is typically about 7 percent (based on the information submitted in response to the Tribunal's questionnaires).

combed wool or mixed solely with cotton, silk or man-made fibres, containing 95 percent or more by weight of worsted wool having an average fibre diameter of 18.5 microns or less, of a weight not exceeding 220 g/m², of subheading Nos. 5112.11 and 5112.19, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers.

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