



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Textiles

RECOMMENDATION

Request No. TR-2003-003

Peerless Clothing Inc.

(Certain Nonwoven Fusible
Fabrics)

*Recommendation issued
Monday, August 30, 2004*

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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 February 18, 2004, 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 nonwoven fusible fabrics for use in the manufacture of men's and boys' jackets (including suit jackets), blazers and vests (waistcoats). Peerless also sought immediate tariff relief.

3. On April 21, 2004, 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 fabrics under investigation were described in the notice as "nonwovens of nylon staple fibres or nylon staple fibres mixed with polyester staple fibres, partially coated with low-melt adhesive, weighing more than 25 g/m² but not more than 70 g/m², for use in the manufacture of men's and boys' jackets (including suit jackets), blazers and vests (waistcoats)" (the subject fabrics).

4. 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 Border Services Agency (CBSA), requesting a complete description of the physical characteristics of the 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. Letters were also sent to the Department of International Trade (DIT) and the Department of Industry requesting information that could assist the Tribunal in its investigation.

5. A staff investigation report was not necessary for the purposes of this investigation, since potential producers of fabrics identical to or substitutable for the subject fabrics did not oppose the request.

PRODUCT INFORMATION

6. Peerless imports the subject fabrics from Germany. Peerless submitted three fabric samples with its request for tariff relief. Two of the samples consisted of nylon and polyester staple fibres and weighed 31 g/m² and 49 g/m². The third sample consisted of nylon staple fibres and weighed 32 g/m². All samples were partially coated on one side with clear colourless flecks of low-melt plastic.

7. The subject fabrics are used to fuse lapels, hems, cuffs and small parts in the manufacture of men's and boys' fine tailored clothing.

1. The terms of reference were last modified on January 13, 2004.

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

3. C. Gaz. 2004.I.1335.

8. Peerless's production process entails the spreading, cutting, sewing and pressing of different textile inputs for use in the manufacture of men's and boys' jackets (including suit jackets), blazers and vests (waistcoats). No operations are subcontracted.

9. As of January 1, 2004, the subject fabrics, classified for customs purposes under classification No. 5603.92.90.20 of the schedule to the *Customs Tariff*,⁴ are dutiable at 14 percent *ad valorem* under the Most-Favoured-Nation (MFN) Tariff and at 10 percent *ad valorem* under 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

Positions of the Clothing Industry

Peerless

10. Peerless has been manufacturing men's apparel since 1919. The company is privately owned and employs in excess of 2,000 persons. Following the *Canada-United States Free Trade Agreement*, 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 manufacture and market well-known brand names, such as Chaps by Ralph Lauren, Ralph by Ralph Lauren and DKNY (Donna Karan New York).

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

12. Peerless indicated that, previously, it was common to use mainly polyester-based thermally or chemically bonded nonwoven fabrics, which resulted in a firm yet resilient hand. Peerless stated that, with the fashion market demanding softer and lighter garments, the men's tailored clothing industry is obliged to move to more sophisticated nonwoven fabrics consisting mainly of nylon fibres, and to rely solely on the thermo-bonding technology using polyamide. In this regard, Peerless indicated that nylon fibres are softer and "loftier" than polyester fibres and that their generous use gives a nonwoven fusible fabric a softer hand. Moreover, the technology of binding the fibres together with a thermal process rather than a chemical spray resin gives a nonwoven fabric a very textile hand and no effect of a "papery" feel. This, according to Peerless, gives the reinforced parts (e.g. lapels, flaps, hems and cuffs) a rich full hand, without taking away the textile and rich-hand feel of the outer fabric.

13. Peerless stated that competition in the men's apparel industry is global in scale and is very fierce. Peerless indicated that the removal of the customs duty on imports of the subject fabrics would allow it to stay competitive in the market and possibly increase its market share in domestic and foreign markets. Peerless also stated that tariff relief would help maintain current employment levels. It indicated that any cost savings would be passed on to the consumer.

14. Peerless indicated that the market drives its business decisions. Peerless stated that, if the market demands garments that have the features that are created by the subject fabrics, it must produce such garments or face a decline in sales. It stated that it has certain cost and markup parameters that must be obtained to allow it to remain at its ultimate price point. Peerless also indicated that, if it were unable to

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

satisfy the market demand for such apparel, this demand would be supplied by foreign imports of finished goods.

15. 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 to the United States under Canadian TPLs and that, therefore, duties on the subject fabrics seriously affect its market position in the United States. Therefore, tariff relief would assist it in overcoming the elimination of duty drawback.

Copley Apparel Group

16. Copley Apparel Group, of Hamilton, Ontario, a manufacturer of men's tailored suits, jackets and trousers that employs over 500 persons, supported Peerless's request for tariff relief. It stated that the benefits anticipated from such relief would allow it to stay competitive in the market, possibly increase its market share in the highly competitive marketplace and help the company maintain current employment levels.

Positions of the Textile Industry

Canada Hair Cloth Company

17. Canada Hair Cloth Company (CHC), of St. Catharines, Ontario, has been manufacturing woven canvas and fusible fabrics for the Canadian men's and boys' apparel industry for over 120 years. In response to the Tribunal's domestic producer's questionnaire, CHC supported Peerless's request for tariff relief, but indicated that the weight range was too broad and, therefore, that the maximum range should be established at "not more than 55 g/m²" in lieu of 70 g/m². However, on June 3, 2004, CHC advised the Tribunal that it had changed its position and supported Peerless's request for tariff relief as described in the notice of commencement of investigation.

Texel Inc.

18. Texel Inc., 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. It indicated that it does not produce fabrics identical to or substitutable for the subject fabrics.

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

6. *NAFTA* provides preferential 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). 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.

Positions of Distributors

Parapad Inc.

19. Parapad Inc., of Montréal, Quebec, was founded in 1948 and is a major distributor of interlinings for men's and women's clothing. It claims to be the largest manufacturer of shoulder pads in Canada. Parapad Inc. supported Peerless's request for tariff relief. It stated that identical or substitutable nonwovens are not available from domestic sources and that tariff relief on the subject fabrics would allow the Canadian men's apparel industry to remain competitive in the market, as well as enable it to expand production levels, which in turn would help Parapad Inc. maintain production and employment levels.

Veratex Lining Ltd.

20. Veratex Lining Ltd., of Montréal, Quebec, is an importer and distributor of nonwoven fusible fabrics to the Canadian men's and women's apparel manufacturers. It supported Peerless's request for tariff relief and stated that the scope of the request for tariff relief should be expanded by including nonwoven fusible fabrics of 100 percent polyester staple fibres and adding ladies' wear in the end-use provision.⁷

OTHER INFORMATION

21. DIT informed the Tribunal that Canada does not maintain quota restraints on the subject fabrics. The CBSA indicated that there would be no additional costs, over and above those it normally incurs, to administer the tariff relief should it be granted.

ANALYSIS

22. 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.

23. Peerless claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabrics. Domestic fabric producers did not contest this claim. 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 \$50,000. In addition, tariff relief would provide benefits to users in the form of potentially increased sales and stable employment, as well as reduced costs, which could translate into benefits to the consumer in terms of lower prices. In summary, the Tribunal finds that the tariff relief requested by Peerless would provide net economic gains for Canada.

7. By letter dated May 26, 2004, the Tribunal advised Veratex that it had decided not to expand the scope of the investigation because this would unduly delay the conclusion of the request filed by Peerless. The Tribunal also indicated that Veratex could file a separate request for tariff relief in accordance with the *Textile Reference Guide*.

24. Peerless requested that tariff relief be effective “immediately”. The evidence presented to the Tribunal to justify such a request is that the subject fabrics are used, at present, in the manufacture of men’s and boys’ jackets (including suit jackets), blazers and vests (waistcoats). It is the Tribunal’s view that the commencement of tariff relief is warranted as soon as possible.

RECOMMENDATION

25. 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 nonwovens of nylon staple fibres or nylon staple fibres mixed with polyester staple fibres, partially coated with low-melt adhesive, weighing more than 25 g/m² but not more than 70 g/m², of subheading No. 5603.92, for use in the manufacture of men’s and boys’ jackets (including suit jackets), blazers and vests (waistcoats). The tariff relief should be granted as soon as possible.

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Zdenek Kvarda
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
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Secretary