



**REPORT TO
MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
HEMISPHERE PRODUCTIONS INC.
REGARDING
100% POLYESTER HERRINGBONE
WOVEN FABRIC**

JUNE 22, 1995

HEMISPHERE PRODUCTIONS INC.

REQUEST NO.: TR-94-005

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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.

Pursuant to the Minister's reference, on January 11, 1995, the Tribunal received a request from Hemisphere Productions Inc. (Hemisphere) of Montréal, Quebec, for the immediate and permanent removal of the customs duty on importations, from all countries, of 100% polyester herringbone woven fabric, 56 in. wide, of non-textured filament yarns, of 190 deniers and 1,200 turns per metre in the warp, of 150 deniers and 1,800 turns per metre in the weft, of 40 ends per inch in the warp, of 80 picks per inch in the weft and of a weight of 283 g/m² (the subject fabric), for use in the production of ladies' sportswear.

On February 22, 1995, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation, which was widely distributed and published in Part I of the March 4, 1995, edition of the Canada Gazette.

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of identical or substitutable fabrics. Questionnaires were also sent to potential users of the subject fabric for use in the production of ladies' sportswear and to several potential importers of the subject fabric. A letter was sent to the Department of National Revenue (Revenue Canada) requesting information on the tariff classification of the subject fabric, and a sample was provided for laboratory analysis. 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, from Hemisphere and from other firms that responded to the questionnaires, was provided to the parties that had filed notices of appearance for this investigation. These parties are Hemisphere, the Canadian Textiles Institute (CTI), the Canadian Apparel Federation, Doubletex and Flamcan Inc.

The CTI filed a submission with the Tribunal, to which Hemisphere provided a response. A public hearing was not held for this investigation.

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

PRODUCT INFORMATION

Revenue Canada analyzed the subject fabric and found that its specifications differed in almost all respects from those declared by Hemisphere. The following table provides a comparison of those specifications which were found to be at variance.

<u>Comparison of Specifications of Subject Fabric</u>			
		<u>Hemisphere</u>	<u>Revenue Canada</u>
Fabric	Width (m)	1.42	1.45
	Weight (g/m ²)	283	200
Warp Yarns	Deniers	190	149
	Turns per Metre	1,200	961
	Ends per Inch	40	185
Weft Yarns	Deniers	150	164
	Turns per Metre	1,800	1,265
	Picks per Inch	80	88

Some of these variances in product specifications were detected by domestic producers before the Revenue Canada report was received by the Tribunal. The domestic producers brought to the Tribunal's attention the fact that the declared weight, ends per inch and picks per inch of the subject fabric were incorrect.

Some of those discrepancies may have logical explanations. For example, the correct fabric weight was found by Revenue Canada to be 200 g/m², and not 283 g/m² as submitted by Hemisphere. However, a weight of 283 g/linear metre (given the stated width of 1.42 m) equates to a weight of 199 g/m². Therefore, it is possible that some confusion existed in the correspondence between Hemisphere and its Japanese supplier regarding the weight of the subject fabric. Furthermore, the variances in the number of turns per metre in the warp and weft yarns were attributed by Revenue Canada, at least in part, to technical problems commonly associated with carrying out that particular type of analysis.

Other variances are not as readily explainable, and, in the final analysis, the fabric description as submitted by Hemisphere and as determined by Revenue Canada differed in all the specifications noted above.

With regard to the other specifications, it was agreed that the subject fabric is made of 100% polyester non-textured filament yarns. However, the CTI argued that, technically speaking, the subject fabric is not herringbone, as claimed by Hemisphere. Consoltex Inc. (Consoltex) also pointed out that the subject fabric has a caustic finish which it is currently not capable of applying.

The subject fabric is classified for customs purposes under tariff item No. 5407.60.90 of Schedule I to the *Customs Tariff*.² It is dutiable at 20.5 percent ad valorem under the MFN tariff and the GPT; at 20.2 percent ad valorem under the BPT; at 7.5 percent ad valorem under the U.S. tariff; and at 20.0 percent ad valorem under the Mexico tariff.

Hemisphere uses the subject fabric to produce ladies' blazers, pants, skirts, vests and shorts. These garments are produced on Hemisphere's behalf by four subcontractors in the province of Quebec. These subcontractors cut the subject fabric to the required sizes and shapes and sew the cut pieces into garments.

Polyester woven fabrics are used by numerous manufacturers in Canada as inputs for use in the production of a wide variety of finished products. However, it appears that no other domestic apparel manufacturers have access to the subject fabric imported by Hemisphere. Indeed, in its submission, Consoltex contends that Hemisphere has *de facto* exclusivity on this fabric.³

REPRESENTATIONS

Hemisphere claims that it is not always able to obtain fashion fabrics on the domestic market which are suitable for its needs or its customers' expectations. Furthermore, it does not find that there are identical or substitutable domestic fabrics available which have the feel, the finish or the dyeing consistency of the subject fabric.

In addition to Hemisphere, two other domestic producers of ladies' sportswear support the removal of the customs duty. These producers, Lori Ann Mfg. Inc. and DDI Fashion Design Inc., both of Montréal, do not consider that the subject fabric is available from Canadian production. An apparel retailer, D'Allaird's Stores Inc., of Montréal, and an importer/wholesaler, Rose E. Dee (International) Ltd., of Toronto, Ontario, also support the removal of the customs duty for the same reason.

Consoltex opposes the request, claiming that, while it does not currently produce an identical fabric, it could do so with some investment in new finishing equipment. At the same time, it claims that many of the fabrics that it currently sells to the ladies' apparel trade are substitutable for the subject fabric.

The CTI opposes the request for duty-free entry of the subject fabric, alleging that such duty-free entry would have an injurious impact on Canadian producers of substitutable fabrics that sell to Canadian ladies' apparel manufacturers that compete with Hemisphere at the retail level. Furthermore, it would benefit one apparel manufacturer to the disadvantage of other apparel manufacturers and retailers. The CTI alleges that substitutable fabrics are produced in Canada by Consoltex and Doubletex and that Hemisphere had not provided any evidence of attempts by it to source the subject fabric domestically prior to importing it.

The Department of Foreign Affairs and International Trade informed the Tribunal of the current quota restraints on polyester filament fabrics, including any fabric mixed mainly or solely with polyester filaments. In addition, it advised that ex-quota entry on textile inputs will be considered where recommendations have been made by the Tribunal to remove the customs duty on the basis of non-availability.

2. R.S.C. 1985, c. 41 (3rd Supp.).

3. Tribunal Exhibit TR-94-005-11.1, Administrative Record, Vol. 3 at 32.

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

The Department of Industry provided information on the market for polyester fabrics in Canada, and identified the domestic producers of such fabrics.

ANALYSIS

Each case before the Tribunal must be judged on its own merits. In this particular case, the Tribunal concluded that variables such as fabric weave, weight and width, yarn denier and the number of ends and picks per inch were not defining characteristics which could be used to determine whether the subject fabric is, or could be, produced in Canada. While some, or all, of those characteristics may be found to be critical in other requests for tariff relief, in the Tribunal's view, those characteristics are not determinant in this instance. The evidence shows that the essential characteristics of the subject fabric that differentiate it from fabrics currently produced by Consoltex are the high twist of the yarns and the caustic finish applied to the fabric. These variables are not inconsequential. Their effect is such that the subject fabric apparently has a uniqueness of feel and finish that is not broadly available from other suppliers. In fact, in the submission filed on behalf of the CTI, it is stated that "fabric identical to the subject fabric is not known to be available from any country in the world except Japan."⁴

The primary direct benefits of granting the tariff relief, based on the historical level of imports of the subject fabric and the projections provided by Hemisphere, would amount to considerably less than \$100,000 per annum, if the subject fabric were dutiable under the MFN tariff and assuming no further import volume or price changes.

Consoltex did not provide any data relating to costs or prices of the fabrics that it currently produces and which it alleges are substitutable for the subject fabric imported by Hemisphere. As a result, the Tribunal was unable to determine if viable substitutes do in fact exist for the subject fabric. Neither was the Tribunal able to calculate any costs which might be incurred by domestic fabric producers should Hemisphere's request for tariff relief be granted. The information that Consoltex did submit shows that ladies' sportswear made from an allegedly substitutable fabric of its production retails at considerably lower price points than Hemisphere's ladies' sportswear made from the subject fabric.

Additionally, the cost to Hemisphere for the subject fabric, even after removal of the duty, would still be higher than the price at which Consoltex states that it would sell the identical fabric in Canada, were it to include such fabric in its product line. Indeed, the CTI stated that, due to increases in the value of the yen, the landed price of the subject fabric in May 1995 would have been 30 percent higher than in January 1994.

Clearly, price alone is not sufficient inducement to lead Hemisphere to purchase domestically produced fabrics. Rather, Hemisphere's willingness to pay a premium for the subject fabric tends to support its contention that domestic fabrics are not substitutable for the subject fabric in the market in which it competes.

4. Tribunal Exhibit TR-94-005-41, Administrative Record, Vol. 5 at 29.

In summary, the only Canadian producer claiming to be able to manufacture a fabric identical to the subject fabric acknowledges that it does not currently do so. In fact, the CTI's submission points out that a fabric identical to the subject fabric is not known to be available from any country in the world except Japan. Consoltex notes that, in order to produce such a fabric, it would have to import yarns and have them twisted in Canada to the required number of turns per metre, buy specialized "weight reduction" equipment that it does not currently possess in order to reproduce the caustic finish of the subject fabric and receive orders for unspecified minimum volumes in order to produce the subject fabric.

In the circumstances, the evidence suggests that no cost would be incurred by Consoltex at this time as a result of the removal of the customs duty. On the other hand, Consoltex has the expertise and all but some of the equipment needed to produce fabrics identical to that for which tariff relief has been requested. In that connection, Consoltex noted in its submission to the Tribunal that it was considering the feasibility of buying the equipment that it does not currently possess, and without which it cannot produce the subject fabric.

Should Consoltex proceed with this acquisition, and if it requests the commencement of an investigation under subparagraph 18(1) of the Tribunal's Textile Reference Guidelines for the purpose of recommending the amendment of an order prior to the expiry of that order, the Tribunal will be able to commence such an investigation. However, in order to ensure a degree of financial stability for Hemisphere or any other apparel manufacturers that want to use the subject fabric, the Tribunal recommends that the tariff relief be granted for a three-year period.

RECOMMENDATION

In light of the foregoing and the evidence on the record, the Tribunal hereby recommends to the Minister that the customs duty on importations, from all countries, of the subject fabric, for use in the production of ladies' sportswear, be removed for a three-year period.

Raynald Guay
Raynald Guay
Presiding Member

Lise Bergeron
Lise Bergeron
Member

Lyle M. Russell
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Member