



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
PEERLESS CLOTHING INC.
REGARDING
CERTAIN WOVEN FABRICS OF VISCOSE
RAYON/ACETATE**

FEBRUARY 11, 2004

PEERLESS CLOTHING INC.

REQUEST NO. TR-2002-007

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 5, 2003

Tribunal Members: Patricia M. Close, Presiding Member
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Witnesses:

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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 December 17, 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 certain woven fabrics of viscose rayon/acetate, for use as lining in the manufacture of men's and boys' jackets (including suit jackets), blazers and vests (waistcoats). Peerless also sought immediate tariff relief.

On February 25, 2003, 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 "woven fabrics, dyed or of single yarns of different colours, consisting solely of viscose rayon^[4] filaments in the warp and cellulose acetate filaments in the weft, measuring less than 200 decitex per single yarn, of a weight not exceeding 100 g/m², of subheading Nos. 5408.22 and 5408.23, for use as lining in the manufacture of men's and boys' jackets (including suit jackets), blazers and vests (waistcoats)" (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), now the Canada Border Services Agency, 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 Foreign Affairs and International Trade (DFAIT) and the Department of Industry (Industry Canada) requesting information that could assist the Tribunal in its investigation.

A staff investigation report summarizing the information received from the CCRA, DFAIT, 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, Monterey Textiles (1996) Inc. (Monterey) and Peerless filed submissions with the Tribunal.

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1. The terms of reference were last modified on January 13, 2004.
 2. R.S.C. 1985 (4th Supp.), c. 47.
 3. C. Gaz. 2003.I.688.
 4. Rayon is a generic fibre category defined by the U.S. Federal Trade Commission as a "manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15 percent of the hydrogens of the hydroxyl groups." Viscose is the cellulose xanthate solution used in making viscose rayon, one type of rayon that is produced in far greater quantity than cuprammonium rayon (filaments produced by precipitating cellulose dissolved in a solution of copper oxide in ammonia), the other commercial type.

The Tribunal held a public hearing for this investigation in Ottawa, Ontario, on November 5, 2003, to obtain further evidence and hear arguments in respect of the following issues:

- Monterey's ability to supply fabrics identical to or substitutable for the subject fabrics (in terms of such factors as technical characteristics, commercial availability and market acceptance of fabrics)
- The manufacturing processes used by Peerless in the production of men's and boys' fine apparel and its impact on Peerless's choice of lining
- The net economic gains to Canada (i.e. the impact on Monterey and on users and importers of the subject fabrics in terms of the effect on prices, sales, profitability, employment) should the tariff relief be granted on the subject fabrics

The record of this investigation consisted of all Tribunal exhibits, including the public and protected replies to questionnaires, witness statements and all exhibits filed by the parties throughout the investigation, as well as the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

PRODUCT INFORMATION

Peerless has imported only small amounts of the subject fabrics from Germany to perform test production runs. Peerless submitted three fabric samples with its request for tariff relief. Two of the samples consisted of three-thread twill⁵ woven fabrics, of single yarns of different colours, made of viscose rayon filaments (45 percent) in the warp and cellulose acetate filaments (55 percent) in the weft. These samples weighed 73 g/m² and 83 g/m². The third sample also consisted of a three-thread twill woven fabric, of single yarns of different colours, made of viscose rayon filaments (56 percent) in the warp and cellulose acetate filaments (44 percent) in the weft. The sample weighed 91 g/m². The fabrics have an iridescent⁶ (i.e. two-tone) look that is the result of using two different cellulose substrates, in this case, viscose and acetate.

Peerless uses the European engineering production method that is highly automated and allows for the large-scale manufacture of men's and boys' fine clothing. Under this method of production, all components of the outer part of the garment and all components of the inner part of the garment are assembled separately (two-shell method). During the production process, the subject fabrics are spread, cut, sewn and pressed to result in their use as lining for men's and boys' jackets (including suit jackets), blazers and vests (waistcoats). The lining is subjected to various stresses, including heat and steam, at several points during the manufacturing process. No operations are subcontracted.

As of January 1, 2004, the subject fabrics, classified for customs purposes under classification No. 5408.23.90.12 or 5408.23.90.81 of the schedule to the *Customs Tariff*,⁷ are dutiable at 14 percent *ad valorem* under the Most-Favoured-Nation (MFN) Tariff and the Costa Rica Tariff and are duty free under the United States Tariff, the Least Developed Country Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

5. "Twill" is defined as a weave that repeats on three or more ends and picks and produces diagonal lines on the face of the fabric.

6. An iridescent fabric is a fabric with changeable colour or shot effects that may be the result of dye, finish or weave.

7. S.C. 1997, c. 36.

REPRESENTATIONS

Positions of the Clothing Industry

Peerless

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).

Peerless claimed that no Canadian textile manufacturer produces and supplies fabrics that are identical to or substitutable for the subject fabrics. Peerless alleged that no one in Canada makes lining from viscose rayon in the warp and acetate in the weft (*viscose rayon warp fabrics*).⁸ Peerless submitted that the CCRA laboratory reports established that the samples provided by Monterey are not identical to the subject fabrics. Peerless also submitted that Monterey's lining, including fabrics made from 100 percent acetate in the warp and 100 percent viscose rayon in the weft (*acetate warp fabrics*) are not substitutable. Peerless submitted that the quantities and delivery times available from foreign suppliers meet its needs and that, furthermore, the large variety of colours and patterns available from foreign suppliers far outmatches that which could be available from domestic sources.

Peerless submitted that it is the warp that gives a fabric its strength and that the yarns used in the warp of a fabric are critical to the strength of the fabric. In this regard, Peerless stated that viscose rayon warp fabrics are much stronger than acetate warp fabrics. According to Peerless, this fact was also confirmed by the CCRA. Peerless submitted that the greater strength in the warp is needed in order to meet the requirements of its European production method and to produce a quality jacket with a quality lining that has good durability. Peerless also submitted that tests of Monterey's acetate warp fabrics have established that they do not meet the performance standards required by Peerless, in that they are further weakened during the European production process, given that acetate is prone to shrinkage, heat damage and dryness; viscose is not.

Peerless submitted that, although there may be some shrinkage in the weft of the subject fabrics, this is normally compensated by the pleat in the lining in the centre back of the jacket. Nevertheless, Peerless maintained that the shrinkage has a much smaller effect on the manufacturing process than if the acetate were in the warp. Furthermore, viscose rayon warp fabrics permit faster cutting, sewing and pressing. Peerless submitted that these advantages, in turn, result in efficiencies and cost savings to Peerless, enhancing its competitiveness. Peerless submitted that, in order to accommodate acetate warp fabrics, two additional operations that are currently not part of its European production method would have to be added to its production process, i.e. fullness and trimming.⁹ According to Peerless, this addition would result in added costs and losses in efficiency.

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8. "Warp" is the set of yarn in all woven fabrics that runs lengthwise and parallel to the selvage and is interwoven with the filling in the fabric. "Weft" or filling is the yarn running from selvage to selvage at right angles to the warp.
 9. "Fullness" requires that the machine operator feed a bit more lining every few inches when the lining is sewn to the outer fabric on the chest and back portions of the jacket. "Trimming" means cutting the lining to fit the final jacket form.

Peerless submitted that it would prefer to stay with the 100 percent viscose rayon lining that it has used for 20 years, but that it has to switch to the subject fabrics for part of its production because of market demands for iridescent lining. Peerless submitted that it must meet the demands of the fashion market and that the Tribunal, on numerous occasions, has acknowledged that there is a much lower level of substitutability in the fashion market and that, if there is a colour, a look or a fabric that is needed, it has to be provided. Peerless submitted that the men's fine-tailored clothing market is now using lining for jackets as a fashion statement and is demanding iridescent lining that must be strong to carry business paraphernalia, yet the lining must be light because of the lighter outer shell fabric. Peerless indicated that, if the market demands iridescent lining, Peerless 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 points. It submitted that the subject fabrics offer a European cachet used by Peerless and that Monterey's lining is not suitable in the market in which it operates. Peerless submitted that Monterey's acetate warp fabrics may be acceptable in other market segments or to other manufacturers of men's fine clothing, but not in the market segment in which Peerless competes.

Peerless submitted that Monterey does not plan¹⁰ to make fabrics identical to the subject fabrics for the most important lining customer in North America and that, therefore, Monterey does not have the ability to supply identical fabrics. Peerless also submitted that Monterey's acetate warp fabrics are not substitutable for the subject fabrics because Peerless cannot use them in its manufacturing process.

Peerless submitted that the subject fabrics are substantially more expensive than the lining produced by Monterey. Accordingly, Monterey would not be affected if tariff relief were granted and would be able to compete effectively against imports of the subject fabrics if it chose to begin production of identical or substitutable fabrics. Peerless also submitted that, if Monterey could produce a fabric that is identical to or substitutable for the subject fabrics, Peerless and other Canadian men's apparel manufacturers would consider buying it, given Monterey's proximity to their operations. In this regard, Peerless submitted that pricing and profit margins supplied by Monterey indicate that it could compete on price.

Peerless submitted that competition in the men's apparel industry is global in scale and fierce, and that its export potential is undermined by increases in the manufacture, in the Caribbean and Andean countries, of apparel from U.S. fabric, which is re-imported duty free in the form of apparel for consumption in the U.S. market. Peerless indicated that the removal of the customs duty on imports of the subject fabrics would allow it to stay competitive in the market, especially the U.S. market. Peerless submitted that, because of the *North American Free Trade Agreement*,¹¹ it no longer gets a drawback¹² 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 would seriously affect its market position in the United States. Therefore, tariff

10. During the hearing, Monterey acknowledged that, at this time, it does not have an action plan to produce linings with viscose rayon in the warp and acetate in the weft. *Transcript of Public Hearing*, 5 November 2003 at 116, 133.

11. 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*].

12. *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.

relief would assist it in overcoming the elimination of duty drawback and help keep it competitive with other offshore firms that sell into the U.S. boys' and men's wear market.

Peerless submitted that, based on the evidence, tariff relief would provide net economic gains for Canada. According to Peerless, such relief would enable it to maintain or increase employment levels, sales and profitability. Peerless submitted that, should tariff relief not be granted, this would have an adverse effect on it because it does not pay duties on lining that it currently uses, i.e. 100 percent viscose rayon lining. Moreover, any cost increases, if passed along, would result in price increases for the consumer. Peerless submitted that, should tariff relief be granted, Monterey would not be adversely affected because the alleged substitutable fabrics represent a small percentage of Monterey's business. In addition, Monterey would not lose sales in that Peerless does not, at present, purchase any lining from Monterey. Peerless also submitted that duties on acetate warp fabrics would remain and that, therefore, Monterey would enjoy tariff protection for its fabrics. Furthermore, Monterey's sales to the women's apparel industry would not be affected because the end-use provision is restricted to men's and boys' wear. Peerless indicated that 100 percent acetate fabrics are a substantial part of Monterey's business and are eligible for preferential treatment under *NAFTA*, which provides an advantage over imported fabrics. Finally, Peerless submitted that, in today's competitive market, users of acetate warp lining and 100 percent acetate lining are not going to switch to the subject fabrics, should tariff relief be granted, because they want to keep their costs at a level required by the market that they serve. Peerless did submit, however, that all Canadian manufacturers of men's apparel would switch to the subject fabrics, if tariff relief were granted.¹³ Later in the hearing, Peerless clarified this statement to mean that it only applied to firms holding quotas.¹⁴

Weston Apparel Manufacturing Inc. (Weston)

Weston, of Toronto, Ontario, a manufacturer of men's suits, jackets, blazers, trousers and vests, supported Peerless's request for tariff relief. Weston did not appear at the hearing. In reply to the Tribunal's questionnaire, it indicated that there are no fabrics identical to or substitutable for the subject fabrics available in Canada. Weston stated that the benefits anticipated from such relief would allow it to stay competitive in the market.

Positions of the Textile Industry

Doubletex

Doubletex, of Montréal, Quebec, is Canada's largest fabric-converting mill and employs over 470 persons. Doubletex advised the Tribunal that it did not oppose Peerless's request for tariff relief.

Monterey

Monterey, of Drummondville, Quebec, is a vertically integrated operation, specializing in the supply of lining to the men's, ladies' and specialty wear markets. Monterey took over the former Canadian subsidiary of Celanese, a global leader in acetate products. It serves these markets primarily with fabrics made of 100 percent acetate, various acetate/viscose rayon blends, various cuprammonium rayon/viscose rayon blends and 100 percent cuprammonium rayon. Monterey appeared at the hearing under subpoena.

13. *Transcript of Public Hearing*, 5 November 2003 at 54.

14. *Ibid.* at 80.

Monterey opposed Peerless's request for tariff relief and submitted that it produces acetate warp fabrics that it considers to be identical to or substitutable for the subject fabrics. Therefore, it has no action plan to produce viscose rayon warp fabrics. Moreover, Monterey submitted that it has been producing iridescent lining since 1996. Monterey provided 10 fabric samples¹⁵ that it considered as appealing, brilliant, soft and silk-like as the samples provided by Peerless. With respect to 2 of the 3 samples submitted by Peerless, Monterey stated that they are acetate rich, not viscose rayon rich; therefore, according to Monterey, Peerless's statement that acetate is an inferior fibre raises the question of why Peerless is requesting the duty-free entry of acetate-rich fabrics that are currently available in Canada.

Monterey submitted that it is not only the warp that makes a fabric but also the overall construction (i.e. warp and weft), weight, appearance (two-tone effect), dyeing and finishing of the fabric. Monterey submitted that its fabrics meet and surpass industry standards and that it regularly uses lightweight yarns in the warp of its lining in order to achieve the weight and performance requirements for men's wear. Monterey submitted that well-constructed fabrics perform well at all stress points.

Monterey submitted that, since its start-up, Peerless has appeared determined not to buy from Monterey, no matter what fabric or fabric blends it makes. In response to certain issues raised by Peerless concerning the subject fabrics, Monterey made the following comments:

- With respect to Peerless's assertion that German fabrics are more moisture-absorbent, Monterey stated that it uses perspiration and gas fast dyes¹⁶ on all the acetate/viscose rayon fabrics that it produces. In addition, all its fabrics are constructed to meet all strength tests and are, therefore, viewed as equal to or better than the fabric samples submitted by Peerless. Monterey stated that it has not received any complaints from its clientele regarding the quality of its products.
- With respect to the European method of production, Monterey indicated that its fabrics are used in state-of-the-art cutting and sewing facilities worldwide with no problems.
- With respect to the shrinkage factor, Monterey stated that it is a non-issue and that, according to in-house testing, all its fabrics meet or surpass standards for men's wear lining.
- With respect to the faster cutting and sewing factor, Monterey stated that Peerless has not used enough fabric from Monterey to make this claim. This has never been an issue with Monterey's clientele worldwide.
- With respect to the large variety of colours and patterns from foreign suppliers, Monterey stated that it has the capability to dye lining fabric any colour and that it can offer any pattern according to the client's needs, if the client is serious about ordering a particular pattern in a reasonable quantity.
- With respect to delivery times, Monterey stated that its delivery times are competitive and that it has not received any complaints from its clientele worldwide.

15. On March 27, 2003, the Tribunal sent these samples to the CCRA for laboratory analysis. On July 3, 2003, the Tribunal requested additional analysis concerning the strength of these fabric samples.

16. "Fast dyes" are dyes that are stable to colour-destroying agents, such as sunlight, perspiration, washing, abrasion, and wet and dry pressing.

Monterey submitted that Peerless would likely achieve the same goal in terms of competitiveness in the market, should it decide to purchase fabrics from Monterey. Monterey submitted that tariff relief would adversely affect its ability to sell acetate warp fabrics to current and potential customers. Furthermore, Monterey submitted that its other lining business would be affected, as customers would switch to low-priced imports.

OTHER INFORMATION

DFAIT informed the Tribunal that Canada does not maintain quota restraints on the subject fabrics. 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.

Substitutability

With respect to the issue of substitutability, the Tribunal is of the view that there is no onus to be met by either the domestic industry or the opposing party and that the Tribunal must make its factual determination based on the evidence before it. It is the Tribunal's view that, in the marketplace generally, Monterey's iridescent linings are substitutable for the subject fabrics. Whether or not Monterey's acetate warp fabrics are directly substitutable with regard to Peerless's requirements is not clear to the Tribunal. In coming to the conclusion that Monterey's fabrics are substitutable in the marketplace generally, the Tribunal examined Monterey's fabric samples, examined the written evidence and listened to testimony at the hearing. The Tribunal was guided in its assessment of substitutability by four key factors relating to the fabrics: (1) technical issues such as strength, shrinkage and lightness; (2) market acceptance; (3) price; and (4) commercial availability.

1. Technical Issues

– Strength

According to the tests conducted by the CCRA, in six of the seven acetate warp fabrics that Monterey submitted, the acetate yarns in the warp were stronger than the viscose yarns in the warp of Peerless's fabrics.¹⁷ Only two of Monterey's acetate warp fabrics,¹⁸ however, recorded higher breaking strength results than the weakest of Peerless's viscose rayon warp fabric.¹⁹ Notwithstanding, it must be recognized that a number of variables (e.g. number of filaments that compose a yarn, conditions under which the tests were carried out, the chemicals used on the product) may have affected the test results.

17. Tribunal Exhibit TR-2002-007-30A, Administrative Record, Vol. 1 at 143-44.

18. Physical Exhibits TR-2002-007-011.1H and TR-2002-007-011.1I.

19. Physical Exhibit TR-2002-007-4B.

– Shrinkage

Although Peerless stated that its tests of Monterey's acetate warp fabrics revealed that they were prone to shrinkage, it did not present any hard evidence (e.g. number of tests conducted and under what conditions) to the Tribunal to support these results. Monterey, on the other hand, presented in-house test results²⁰ on shrinkage, which showed that, after 12 pressings, the acetate in the warp of one of its most popular linings shrank less than the viscose rayon in the warp for two of Peerless's fabric samples.²¹ For Peerless's third sample, the shrinkage was the same in the warp.

– Lightness

Based on the analysis carried out by the CCRA, the Tribunal notes that Monterey produces acetate warp linings that weigh virtually the same as the subject fabrics.²² The Tribunal also believes that, from the consumer's perspective, the fact that the viscose rayon is in the warp or the weft is not a factor when dealing with issues such as comfort, feel, look and quality. In light of the above, it is evident to the Tribunal that Monterey's acetate warp fabrics may well be an acceptable substitute on technical grounds for the subject fabrics in the market as a whole. It remains unclear to the Tribunal whether Monterey's acetate warp fabrics are substitutable in Peerless's case because of its production process. In the Tribunal's view, Peerless has not rigorously tested these fabrics and, therefore, the Tribunal cannot conclude that Monterey's acetate warp fabrics are not substitutable with regard to Peerless's needs. It would appear, however, that they are substitutable from the standpoint of their technical characteristics for other manufacturers of men's and boys' fine clothing.

2. Market Acceptance

The Tribunal's terms of reference provide that market acceptance of the domestic fabrics for a specific end use, in this case, iridescent lining for men's and boys' fine clothing, is also a relevant factor in determining substitutability. Because of fashion trends, the market is looking for lining that is iridescent. Iridescence may be achieved through the use of both acetate and viscose rayon in approximately equal amounts. Monterey provided evidence that it has been producing iridescent linings since 1996.²³ The Tribunal notes that these linings have been sold to companies that are major competitors of Peerless.²⁴ Retailers, it would appear, are not necessarily looking for an iridescent lining with viscose rayon in the warp. The Tribunal, therefore, concludes that there is a market acceptance of Monterey's iridescent linings.

3. Price

The Tribunal views price as an essential factor when assessing substitutability and one that is closely related to market acceptance. Although Peerless argued that Monterey's acetate warp fabrics are not commercially substitutable because they are significantly less expensive than the subject fabrics, the Tribunal is of the view that the average landed price of the subject fabrics, even with the addition of the

20. Tribunal Exhibit TR-2002-007-35 (protected), Administrative Record, Vol. 2 at 51-52.

21. Physical Exhibits TR-2002-007-4B and TR-2002-007-4C.

22. Tribunal Exhibit TR-2002-007-4A, Administrative Record, Vol. 1 at 31, 33, 35; Tribunal Exhibit TR-2002-007-19A, Administrative Record, Vol. 1 at 96.7.

23. *Transcript of Public Hearing*, 5 November 2003 at 152.

24. Tribunal Exhibit TR-2002-007-18.1 (protected), Administrative Record, Vol. 4 at 42-43; Tribunal Exhibit TR-2002-007-18.2 (protected), Administrative Record, Vol. 4 at 49.

current 14 percent *ad valorem* duty, is not high enough to differentiate them from the acetate warp fabrics produced by Monterey and sold by distributors.²⁵

4. Commercial availability

Monterey stated categorically that it does not have plans to produce viscose rayon warp fabrics. However, it is clear to the Tribunal from the above analysis that Monterey's acetate warp fabrics are substitutable for the subject fabrics for the market as a whole and that they are certainly commercially available, although the extent to which they are available in all the colours and designs that Peerless may require is not clear from the evidence on the record.²⁶

Net Economic Gains for Canada

The Tribunal's decision to recommend the reduction or removal of a tariff must be based on the extent to which it considers that such relief would provide net economic gains for Canada. It is clear from the evidence that Peerless has made significant capital investments in order to "deskill" its operations and gain production efficiencies. Peerless currently employs over 2,000 persons in the Montréal area. Since 1996, Monterey has established itself as a reliable source of supply for a wide range of acetate linings, primarily 100 percent acetate. The production of linings for the apparel industry is a highly technical industry and currently employs fewer than 100 persons.

The Tribunal accepts Peerless's position that tariff relief would allow it to contain costs and, therefore, continue to compete with finished products from low-wage countries, both at home and in the highly competitive U.S. market. In the United States, buyers for higher-end mass marketers can source apparel with viscose rayon warp fabrics from countries that have certain competitive advantages such as low labour costs and duty-free access to the U.S. market for finished products. Peerless is up against this competition and cannot afford to pass on the cost of the duties on the linings to retailers. Monterey submitted that tariff relief would adversely affect its ability to sell acetate warp fabrics to current and potential customers in the men's and boys' apparel business. Monterey also stated that its other lining business would be affected, as customers would switch to lower-priced imports. Based on information provided by Peerless and Weston, the Tribunal estimated that tariff relief would represent direct benefits of over \$200,000. Potential benefits were based on the rate of duty for 2004, i.e. 14 percent *ad valorem*. The Tribunal also took into account the estimated percentage of Peerless's production of jackets and blazers that would require the viscose warp lining²⁷ and Peerless's domestic sales and export sales to the United States under TPLs.²⁸ The Tribunal also took into account the fact that, at Peerless, a much higher level of employment is vulnerable to market pressures than at Monterey.

On the basis of the pricing information provided by Monterey and its distributors, the Tribunal is of the view that, faced with duty-free imports of the subject fabrics, Monterey would be under some price pressure and, therefore, would likely choose to lower its prices rather than lose sales from existing customers that may be tempted to switch to the subject fabrics. Although, as noted above, the price

25. Tribunal Exhibit TR-2002-007-21 (protected), Administrative Record, Vol. 2 at 22.

26. At the hearing, Peerless tried to submit additional samples of imported fabrics to illustrate the broad variety of the subject fabrics available from foreign suppliers. Given the Tribunal's policy that all evidence must be filed prior to the hearing unless there are exceptional circumstances, and in light of the fact that Peerless had ample opportunity to file these samples prior to the hearing, the Tribunal decided not to accept the supplementary samples.

27. Tribunal Exhibit TR-2002-007-02 (protected), Administrative Record, Vol. 2 at 5-6.

28. *Transcript of In Camera Hearing*, 5 November 2003 at 2-3.

difference between the subject fabrics and the lining produced by Monterey is not enough to differentiate the products, it may be enough, given the competitiveness in the industry, for Monterey's clients to switch from acetate warp fabrics to viscose rayon warp fabrics if Monterey does not lower its prices to meet those of the subject fabrics. On the basis of the information on file, the Tribunal estimated the amount of any potential price erosion on Monterey's acetate warp fabrics to be significantly lower than the benefits to be gained by Peerless and Weston, should tariff relief be granted.

The Tribunal also notes that the production and sales of acetate warp fabrics to existing customers in Canada for use in men's and boys' jackets represent a small percentage of Monterey's total business²⁹ and that at least 75 percent of its men's and boys' wear lining business are export sales.³⁰ As a result, any impact of tariff relief on Monterey's existing sales would be minimized. Furthermore, Monterey would continue to enjoy tariff protection for its acetate warp fabrics, and its sales of lining for other end uses would not be affected.

During the course of the hearing, Peerless indicated that it was seriously considering the purchase of a cuprammonium/viscose rayon lining from Monterey for 2004.³¹ The Tribunal notes that Order in Council P.C. 2001-579 dated April 5, 2001, amended the schedule to the *Customs Tariff* by removing the customs duty on the importation of such linings. This leads the Tribunal to conclude that it is not necessarily the retention of the duty that will be a factor in deciding whether Peerless will buy lining from Monterey, but rather the proper testing by Peerless of Monterey's fabrics and their compatibility with the manufacturing processes used by Peerless.

In sum, the Tribunal concludes that Monterey's acetate warp fabrics are, in general, substitutable for the subject fabrics. However, because of the manufacturing processes used by Peerless, it remains unclear to the Tribunal whether Monterey's acetate warp linings are, in Peerless's case, substitutable for the subject fabrics. On the basis of the evidence, it is clear that the potential benefits to Peerless and Weston outweigh the potential costs to Monterey. In today's global trading environment, the men's apparel industry is highly competitive. Any increase in costs due to tariffs on fabrics required for a fashion season has an effect on the competitiveness of the Canadian suit manufacturing industry at home and in the United States. Therefore, the Tribunal finds that the tariff relief requested by Peerless would provide net economic gains to Canada.

With respect to Peerless's request that tariff relief be effective "immediately", the Tribunal interprets this request to mean that Peerless would like tariff relief to be effective as of the date of the request. The evidence presented by Peerless suggests that such a request is linked to the timeliness of the upcoming fall fashion season.³² The Tribunal is of the view that relief should be granted in time for the upcoming fall season.

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, dyed or of single yarns of different colours, consisting solely of viscose rayon filaments in the warp and cellulose acetate filaments in the weft, measuring less than 200 decitex per single yarn, of a weight not exceeding 100 g/m², of subheading Nos. 5408.22 and 5408.23, for use as lining in the manufacture of men's and boys'

29. Tribunal Exhibit TR-2002-007-12.1 A (protected), Administrative Record, Vol. 4 at 20.

30. *Transcript of Public Hearing*, 5 November 2003 at 144.

31. *Ibid.* at 83, 112-13.

32. *Ibid.* at 75.

jackets (including suit jackets), blazers and vests (waistcoats). The relief should be granted in time for the upcoming fall season.

Patricia M. Close
Patricia M. Close
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Meriel V.M. Bradford
Meriel V.M. Bradford
Member