



**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
PELION MOUNTAIN PRODUCTS LTD.
REGARDING
DYED POLYESTER FABRIC WITH A URETHANE
COATING**

FEBRUARY 16, 1996

PELION MOUNTAIN PRODUCTS LTD.

REQUEST NO.: TR-95-006

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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 with respect to those requests to the Minister.

Pursuant to the Minister's reference, on May 12, 1995, the Tribunal received a request from Pelion Mountain Products Ltd. (Pelion) of Vancouver, British Columbia, for the permanent removal of the customs duty on importations of dyed polyester fabric of either plain weave or ripstop construction with a urethane coating, having a fabric weight of 70 g/m² or more but not exceeding 120 g/m², a thread size of 75 deniers and a construction of approximately 107 x 76 threads/in. (42 x 30 threads/cm), for use in the production of tarpaulins and tents (the subject fabric).

On August 11, 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 the August 19, 1995, edition of the Canada Gazette, Part I.²

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 known users of the subject fabric for use in the production of tarpaulins and tents and to known 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 samples were 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, Pelion and firms that responded to the questionnaires, was provided to the parties that had filed notices of appearance for this investigation. These parties are Pelion, Doubletex and the Canadian Textiles Institute (CTI).

Doubletex and the CTI filed submissions with the Tribunal, to which Pelion provided a response. A public hearing was not held for this investigation.

PRODUCT INFORMATION

Pelion uses the subject fabric to produce lightweight tarpaulins for backpacking and cycling. To date, Pelion has not used the subject fabric to produce tents. It uses approximately 8.4 x 1.5 metres of the subject fabric to produce one tarpaulin. The production of tarpaulins consists of cutting, sewing, trimming

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

2. Vol. 129, No. 33 at 2877.

and grommetting the subject fabric and then packaging the finished tarpaulins for sale to the retail market. The estimated average delivered selling price of a tarpaulin is \$59.

In its request, Pelion submitted that the subject fabric was classified under classification No. 5903.20.20.21 of Schedule I to the *Customs Tariff*.³ Pelion subsequently notified the Tribunal that the statistical subdivision should have been 91, not 21. All parties were notified of this change.

On September 26, 1995, following its laboratory analysis of the samples provided by Pelion, Revenue Canada advised the Tribunal that the subject fabric was classified in Chapter 54 of the *Customs Tariff* rather than in Chapter 59, as submitted by Pelion. Revenue Canada based its decision on the specific requirement found in Note 2 (a) (1) of Chapter 59 that, in order to qualify as a coated fabric for customs purposes, the coating on the fabric must be “seen with the naked eye.” Revenue Canada explained that the words “seen with the naked eye” should be taken to mean that the impregnation, coating or covering of the fabric must be directly visible upon simple visual inspection. Any change in the “feel” of the fabric or resulting change in colour should not be taken into account.

With respect to the samples provided by Pelion, Revenue Canada was of the opinion that the coating could not be seen with the naked eye and that, therefore, the subject fabric was classified in Chapter 54 of the *Customs Tariff*. Having said this, however, Revenue Canada was also of the opinion that, depending on the fabric and both the type and thickness of the coating, the coating might become visible to the naked eye and, in such cases, the fabric would be classified in Chapter 59, as initially suggested by Pelion. On these grounds, Revenue Canada suggested that, if the Tribunal recommends that tariff relief be granted on the subject fabric, then it should consider recommending that tariff relief be granted on the subject fabric regardless of whether or not the coating is visible to the naked eye, that is, regardless of whether it is classified in Chapter 54 or 59.

TARIFF CLASSIFICATION

Pelion indicated that the subject fabric was classified under classification No. 5903.20.20.91, which refers to textile fabrics coated with polyurethane and containing 85 percent or more by weight of polyesters. Following its analysis of the two samples submitted by Pelion, Revenue Canada informed the Tribunal that the subject fabric was classified for customs purposes, in 1995, under classification No. 5407.60.90.32, which refers to woven fabrics containing 85 percent or more by weight of non-textured polyester filaments and of a weight of 68 g/m² or more but not exceeding 170 g/m².

Under classification No. 5903.20.20.91, the subject fabric was dutiable, in 1995, at 20.5 percent *ad valorem* under the MFN tariff; at 16.5 percent *ad valorem* under the GPT; at 7.5 percent *ad valorem* under the U.S. tariff; and at 13.2 percent *ad valorem* under the Mexico tariff. On the other hand, under classification No. 5407.60.90.32, the subject fabric was dutiable, in 1995, at 20.5 percent *ad valorem* under

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

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.

REPRESENTATIONS

In its request for tariff relief, Pelion submitted that it manufactures outdoor equipment, such as backpacks, bicycle bags, personal flotation devices and some clothing items, as a wholly owned subsidiary of Mountain Equipment Co-op (Mountain Equipment). From 1991 to 1994, Pelion manufactured lightweight tarpaulins for backpacking and bicycle touring using a ripstop nylon fabric with a urethane coating which it imported from the United States.

In 1995, Pelion lost this business when Mountain Equipment began importing finished tarpaulins made from the subject fabric. In order to recapture this business, Pelion proposes to manufacture tarpaulins in Canada. On the grounds that the necessary polyester fabric is not manufactured domestically, Pelion submits that it must import the subject fabric from Taiwan. However, in order for it to produce tarpaulins at a price low enough to compete with finished tarpaulins imported from Taiwan, it requires permanent and complete tariff relief on imports of the subject fabric.

Camp Mate Limited, an importer of similar fabrics, supported Pelion's request for tariff relief on the grounds that it too is unaware of domestic producers of the subject fabric. Further, it noted that it is familiar with Mountain Equipment's requirements concerning the products that it sells and that, when it specifies a certain quality of textile input, no other textile input is acceptable.

The Tribunal also received submissions regarding Pelion's request for tariff relief from: (1) Consoltex Inc. (Consoltex), a major domestic weaver and finisher of nylon fabric; (2) Doubletex, Scythes Inc. and Stedfast Inc., three major textile converters; (3) the Department of Industry (Industry Canada); and (4) the Department of Foreign Affairs and International Trade (Foreign Affairs and International Trade Canada).

Consoltex submitted that it supplies a coated nylon fabric to both of the firms that Pelion listed as being competing manufacturers of tarpaulins. According to Consoltex, both of these firms produce a tarpaulin that is similar to that produced by Pelion. It is Consoltex's position that Taiwanese fabrics are already less expensive than competitive domestic fabrics and have been associated with market disruption involving both domestic polyester filament fabrics and non-polyester fabrics, including those produced by Consoltex. To this end, Consoltex submits that duty-free entry for the subject fabric will exacerbate the threat and disruption to Canadian fabric producers already associated with imports of Taiwanese fabrics.

Doubletex claimed that it produces a fabric that is identical to the subject fabric. It makes this identical fabric by dyeing, coating and finishing imported greige polyester filament fabrics in a variety of weights, including the weights and construction of the subject fabric. However, laboratory tests subsequently carried out by Revenue Canada on the samples provided by Doubletex found them to be similar, but not identical, to the samples provide by Pelion. When informed of these results, Doubletex acknowledged that,

although the samples might not be identical to those of the subject fabric, they were substitutable for the purposes of this request.

Stedfast Inc. and Scythes Inc. also opposed the request for tariff relief. They submitted that, given the opportunity, they could each produce a coated fabric which would be directly competitive with the subject fabric. Both firms also indicated that they currently manufacture and sell fabrics designed to provide the same level of protection as that provided by the subject fabric.

The textile converters were unanimous in their opinion that Canadian companies should be given the first opportunity to supply the subject fabric. However, while they all submit that they can produce a substitutable fabric, they say that they cannot compete with a similar fabric entering duty-free. They submit that granting tariff relief on the finished fabric, while, at the same time, maintaining duties on the identical greige goods, is discriminatory. They are of the opinion that, if tariff relief is granted to Pelion on its imports of the subject fabric, tariff relief should also be granted on the greige fabrics that they import to make the substitutable fabric.

Foreign Affairs and International Trade Canada provided information on quota restraints on imports of the subject fabric classified in Chapter 54, after Revenue Canada determined that it was classified in that chapter. According to Foreign Affairs and International Trade Canada, Canada currently maintains quota restraints on polyester filament fabric from Poland, the Republic of Korea and Taiwan. These quota restraints were implemented to protect Canadian manufacturers from large volumes and low prices of exports from those countries.

Foreign Affairs and International Trade Canada indicated that the annual utilization of the adjusted subrestraint level for polyester filament fabric from Taiwan was 103 percent in 1994. However, not all of the annual utilization was real. After considerable volumes of polyester filament fabric were found to have entered Canada as polyester staple fabric, Foreign Affairs and International Trade Canada imposed a major penalty on Taiwanese imports. This penalty artificially used up the quota. In 1995, Foreign Affairs and International Trade Canada imposed an additional penalty which amounted to about 14 percent of the subrestraint levels.

With respect to Pelion's request, Industry Canada noted that, to its knowledge, there are several Canadian manufacturers of fabrics that are similar or identical to the subject fabric. It also noted that, for many of these companies, woven polyester fabrics for use in the manufacture of tarpaulins and tents are core products and account for up to 20 percent of their production.

In response to these submissions, Pelion stated that, while, initially, it was not aware of any firm supplying the fabric that it requires, it would consider any domestic polyester fabric that was competitive with the subject fabric in terms of quality and price. However, Pelion reiterated its original position that the subject fabric remained the only fabric suitable for the tarpaulins that it produces for Mountain Equipment.

ANALYSIS

In assessing this request for tariff relief, the Tribunal was particularly concerned with the issue of substitutability. In the market for lightweight tarpaulins, a major indicator of substitutability is the acceptance of tarpaulins made from similar fabrics which essentially meet the same end-use requirements. Although the evidence suggests that tarpaulins made from polyester and nylon fabrics generally satisfy the same needs, the Tribunal notes that nylon tarpaulins do not meet the very specific requirements set by Mountain Equipment.

The evidence in this case is clear that Mountain Equipment demands tarpaulins made only from the subject fabric. This is said to be largely because of the performance characteristics that they exhibit, but relative prices are also a factor. At the same time, it is also evident that fabrics other than the subject fabric are demanded by both of the firms that Pelion identified as competitors, because tarpaulins made from these fabrics exhibit the performance characteristics expected of them by purchasers. In sum, despite Mountain Equipment's efforts to differentiate or segment the market for lightweight tarpaulins, the Tribunal is of the view that there is direct competition between tarpaulins made from polyester fabric and those made from nylon fabric.

The Tribunal accepts that Mountain Equipment demands that the unique lightweight tarpaulins that it sells be made from the subject fabric. In the absence of a domestic fabric that it deems to be comparable to the subject fabric, in terms of both quality and price, Mountain Equipment currently imports finished tarpaulins made from the subject fabric and, presumably, will continue to do so.

In these circumstances, the Tribunal finds that tariff relief would benefit Pelion by reducing the cost of the subject fabric to the point where it would be economical for it to produce tarpaulins in Canada for sale to Mountain Equipment. There is no evidence that this will lead to benefits to consumers in the form of lower retail prices. If tariff relief on the subject fabric were limited to imports by Pelion to displace finished tarpaulins imported by Mountain Equipment, there would be no particular adverse effect on domestic textile manufacturers, since they do not produce the subject fabric.

On the other hand, tariff relief on the subject fabric generally may well encourage other manufacturers of tarpaulins to switch from nylon to polyester fabric. It is clear from the evidence that price is a major factor in the buying decision for fabrics for use in the production of tarpaulins and that tarpaulins made from coated polyester fabric and those made from coated nylon fabric compete for market share.

Should the subject fabric become generally available in the market at prices which reflect the removal of the 16.5 percent GPT or the 20.5 percent MFN tariff, depending on how the subject fabric is classified for customs purposes, there will be a strong temptation for Mountain Equipment's competitors to avail themselves of these lower prices and to switch from using domestic nylon fabric to using the subject fabric. In that event, the Tribunal believes that the domestic suppliers of nylon fabric stand to lose sales volumes far in excess of the volumes of imports of the subject fabric required by Pelion to produce tarpaulins for Mountain Equipment.

RECOMMENDATION

Consequently, in view of this assessment, the Tribunal hereby recommends to the Minister that tariff relief on importations of the subject fabric not be granted.

Anthony T. Eyton

Anthony T. Eyton
Presiding Member

Lyle M. Russell

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Member

Desmond Hallissey

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Member