CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

REPORT TO THE MINISTER OF FINANCE

REQUEST FOR TARIFF RELIEF BY PEERLESS CLOTHING INC. REGARDING DYED WOVEN FABRICS OF RAYON

APRIL 12, 1996

PEERLESS CLOTHING INC.

REQUEST NO.: TR-95-009

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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 May 17, 1995, the Tribunal received a request from Peerless Clothing Inc. (Peerless) of Montréal, Quebec, for the immediate and permanent removal of the customs duty on importations of dyed woven fabrics of 100 percent cuprammonium rayon, of 100 percent viscose rayon and of blends of viscose rayon and polyester for use as linings in the production of men's apparel, such as fine tailored suits, sports coats, vests and trousers (the subject fabrics).

On August 25, 1995, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation, which was distributed and published in the September 2, 1995, edition of the Canada Gazette, Part I.[2]

As part of the investigation, the Tribunal's research staff sent questionnaires to known and potential producers of identical or substitutable fabrics. Questionnaires were also sent to known and potential users and importers of the subject fabrics. A letter was sent to the Department of National Revenue (Revenue Canada) requesting information on the tariff classification of the subject fabrics, 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,[3] summarizing the information received from these departments, Peerless and firms responding to the Tribunal's questionnaires, was provided to the parties that had filed notices of appearance for this investigation. These parties are Peerless and the Canadian Textiles Institute (CTI).[4]

The CTI filed a submission with the Tribunal, to which Peerless filed a response. A public hearing was not held for this investigation. The Tribunal recognizes that the CTI's submission was filed late again.[5] Nevertheless, the Tribunal has again decided, with some reluctance, to accept the CTI's submission, as it finds the information significantly important to its investigation, and its late acceptance does not unduly

1. R.S.C. 1985, c. 47 (4th Supp.).
2. Vol. 129, No. 35 at 3039.
3. The distribution of the staff investigation report was scheduled for October 17, 1995, but had to be postponed to December 8, 1995, because of delays caused in providing the Tribunal with appropriate pricing data on the subject fabrics. Further delays caused by parties prevented the Tribunal from reaching its objective of issuing its recommendation within 120 days from commencement of the investigation.
4. The CTI represented Canadian textile producers and, in particular, Monterey Textiles Inc. of Drummondville, Quebec, and Consoltex Inc. of Montréal.
5. See Report to the Minister of Finance: Request for Tariff Relief by Peerless Clothing Inc. Regarding Woven Fabrics of Flax, Request No. TR-94-012, January 17, 1996.

prejudice the interests of Peerless and others. The Tribunal attaches great importance to the need for parties to an investigation to meet all due dates, and its decision in this case should not be seen as a precedent for future cases.

PRODUCT INFORMATION

Revenue Canada advised the Tribunal that samples of the subject fabrics submitted by Peerless were analyzed and found to be woven from:

- single yarns of non-textured cuprammonium rayon filaments, weighing 92 g/m² and classified under classification No. 5408.22.10.00 of Schedule I to the *Customs Tariff*;[6]
- single yarns of non-textured viscose rayon filaments, weighing 67 g/m² and classified under classification No. 5408.22.90.90; and
- single yarns of non-textured polyester filaments in the warp and single yarns of non-textured viscose rayon filaments in the weft, the viscose rayon filaments representing 59 percent of the weight and the polyester filaments representing 41 percent of the weight, weighing 59 g/m² and classified under classification No. 5408.32.00.90.[7]

The subject fabrics are imported from countries benefiting from the MFN tariff. The subject fabrics are dutiable, in 1996, at 19.0 percent *ad valorem* under the MFN tariff; at 20.2 percent *ad valorem* under the BPT; at 19.0 percent *ad valorem* under the GPT; at 5.0 percent *ad valorem* under the U.S. tariff; and at 17.5 percent *ad valorem* under the Mexico tariff.

The record shows that two separate end uses exist for fabrics used as linings, i.e. the manufacture of men's suit jackets, sports coats and vests and the manufacture of men's trousers, with each end use generally having its own separate fabric requirement. The record also shows that both end uses can be further subdivided into two production methods for manufacturing men's apparel. The first, the European engineering production method, is currently used in Canada only by Peerless, and the second, the traditional hand tailoring method, is used by others. The first production method requires 100 percent viscose rayon fabrics or 100 percent cuprammonium rayon fabrics, while the second production method makes use of the previously mentioned fabrics or 100 percent acetate fabrics or blends thereof. For reasons of cost, Peerless prefers fabrics of 100 percent viscose rayon to those of 100 percent cuprammonium rayon. The more costly 100 percent cuprammonium rayon fabrics are used as linings by manufacturers that sell men's apparel in the higher-priced segment of the market. On the other hand, those manufacturers that sell in the mid- to lower-priced segment of the market prefer the less costly acetate fabrics.

With respect to the use of linings in the production of men's trousers, the record shows that blends of cuprammonium rayon or viscose rayon and polyester for added strength can be used in the European engineering production method. Again, for reasons of cost, Peerless has chosen to use fabrics of viscose

6. R.S.C. 1985, c. 41 (3rd Supp.).
7. Peerless's supplier's label indicated a composition of 56 percent viscose rayon and 44 percent polyester. Reference to this composition will be used for the remainder of this report.

rayon and polyester in the production of men's trousers. The record also shows that manufacturers that sell in the mid- to lower-priced segment of the market use acetate fabrics with a softer finish and a special finish to avoid static electricity.

Monterey Textiles Inc. (Monterey) claimed that it used to produce 100 percent viscose rayon fabrics similar to the subject fabrics. It further claimed that its fabrics of acetate and blends of acetate and cuprammonium rayon and viscose rayon are substitutable for the subject fabrics. However, its production facilities were closed in September 1995.[8]

As there is no Canadian producer of identical or substitutable fabrics, the Canadian market for the subject fabrics is sourced only from imports. Users of the subject fabrics estimated total imports, in 1995, to have been over 100,000 square metres for dyed woven fabrics of 100 percent cuprammonium rayon, a somewhat larger but confidential figure for dyed woven fabrics of 100 percent viscose rayon and a much smaller but also confidential figure for dyed woven fabrics of 56 percent viscose rayon and 44 percent polyester. Because of exports of apparel, less than 15 percent of the subject fabrics, by volume, are used in men's apparel sold in Canada.

REPRESENTATIONS

Producers of Men's Apparel

Peerless, established in 1919, advised the Tribunal that it is Canada's largest producer of men's apparel. Following the FTA, Peerless established itself as an international manufacturing and marketing company, supplying a wide range of tailored suits to major outlets in the United States. The company is privately owned and employs in excess of 2,000 persons.

Peerless had previously obtained 100 percent viscose rayon fabrics from Monterey. However, Peerless ended these purchases in 1993, because it claimed that Monterey was not offering the wide variety of fabrics which it required for its export markets. Rather, Peerless found that Monterey was content to produce its made-to-order fabrics and only on the basis of long-term and fixed-price contracts, which were not standard in the industry.

Peerless argued that it requires, for use as visible linings, fabrics of 100 percent viscose rayon rather than fabrics of other materials for a number of reasons, including cost. As noted in the staff investigation report, Peerless compared the performance of cuprammonium rayon and viscose rayon fabrics with polyester and acetate fabrics from a number of points of view. Using its European engineering production method, Peerless tested for shrinkage, heat resistance and moisture retention in relation to electrostatic discharge. Peerless concluded that the use of 100 percent viscose rayon fabrics rather than acetate fabrics permits faster cutting, faster sewing and faster pressing, thus resulting in higher productivity and lower costs. Peerless also determined that viscose rayon fabrics are softer to the touch, more silk-like and shinier or more brilliant, thus

8. Monterey replied to the Tribunal's questionnaire on September 20, 1995. It declared bankruptcy on September 22, 1995. Thereafter, the Tribunal's staff was unable to obtain any information on Monterey's operations.

more appealing to fashion-conscious buyers than are acetate fabrics. Finally, as regards wear performance, in comparison with acetate fabrics, Peerless found that fabrics of 100 percent viscose rayon are more permeable to air and more moisture-absorbent, have greater strength and maintain greater colour constancy.

Peerless requested that the Tribunal grant tariff relief because the subject fabrics are not available in Canada. They are used in virtually all of its production. Peerless advised that tariff relief would allow it to remain competitive, especially in the United States, and would increase its manufacturing employment in Canada and exports. On the other hand, without tariff relief and with the gradual elimination of the Duty Drawback Program between January 1, 1996, and January 1, 1998,[9] Peerless advised that it would be at a price disadvantage.

Coppley Apparel Group (Coppley) of Hamilton, Ontario, and Samuelsohn Limitée (Samuelsohn) of Montréal manufacture men's apparel for the high end of the market. They import fabrics of 100 percent cuprammonium rayon. They remarked on the importance of these fabrics for their high-quality men's garments and noted that the granting of tariff relief is of the utmost importance to maximize their market potential. Both firms limited their comments to men's jackets.

Weston Apparel Manufacturing Company, Division of Dylex Limited (Weston) of Toronto, Ontario, reported to the Tribunal that it could no longer obtain Canadian supplies of acetate fabrics and that it is in the process of costing various import sources of acetate or viscose rayon fabrics. At the same time, Weston recognized that viscose rayon fabrics have more body than 100 percent acetate fabrics, drape well and press more easily, leaving the fabrics looking cleaner and more presentable.

All of the users of the subject fabrics noted above indicated that they currently export men's apparel to the United States. Peerless exports the vast majority of its total production to the United States.

Should tariff relief be granted, the duty savings for Peerless and the other identified users of the subject fabrics, while confidential, are estimated at over $1.5 million annually. However, as explained, Peerless and the other identified users of the subject fabrics are entitled to a duty refund on their exports. This refund will gradually diminish in 1996 and 1997, until it equals zero on January 1, 1998.

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9. For Canadian-U.S. trade, a "duty refund system" replaced the Duty Drawback Program beginning January 1, 1996. The refund is equivalent to the lesser of: (a) the duty paid on a fabric imported to make garments; or (b) the duty paid on the finished garments when exported to the United States. This means that the duty refund system will be phased out at the same pace as the NAFTA tariff-free access is phased in. Full duty drawbacks will, nevertheless, continue to apply indefinitely to Canadian apparel exports to the United States that are traded at full MFN rates of duty after tariff preference levels have been fully utilized. For non-NAFTA goods, tariff preference levels provide limited and conditional eligibility to NAFTA benefits. NAFTA generally classifies men's apparel as non-NAFTA goods when the subject fabrics originate in non-NAFTA countries. There is an exception, however, for the subject 100 percent cuprammonium rayon fabrics and for the subject fabrics when used as linings in men's trousers. For apparel exported to non-NAFTA countries, duty drawbacks will continue to apply indefinitely.

Textile Weavers

The CTI described the central issue in this request as being whether the Government of Canada should transfer a substantial amount of tariff revenue to retailers in the United States and Canada by means which would preclude the re-establishment of the substantial fabric production destroyed in September 1995 by the financial failure of Monterey. In general, the submission can be summarized under the following five points: (1) production by domestic textile producers and their ability to serve Canadian downstream industries; (2) the methodology used by the Tribunal's staff to calculate costs and benefits; (3) the significance of the request to investment decisions by domestic producers and users; (4) substitutability; and (5) the difficulty of administering an end-use tariff code.

Monterey, prior to ceasing production in September 1995, advised that it had produced and sold dyed woven fabrics of 100 percent viscose rayon exclusively to Peerless. In addition, Monterey indicated that it had sold acetate and viscose rayon fabrics and acetate and cuprammonium rayon fabrics, which it considered to be substitutable for the subject fabrics, to various other customers for use in high-quality men's suits. Subsequently, the CTI advised the Tribunal that there is an ongoing effort to re-establish Monterey's production. It also pointed out that Monterey had documented major sales volumes of 100 percent viscose rayon fabrics to Peerless. However, after 1990, these declined to nil in 1994 and 1995, when Monterey lost sales to imports. The CTI contended that, if tariff relief is granted, fabric production and the 400 jobs arrested by Monterey's financial problems will not be re-established.

In addition, the CTI reiterated the opposition of Consoltex Inc. (Consoltex) to the granting of tariff relief on dyed woven fabrics of viscose rayon and polyester for use as linings in men's trousers and on 100 percent cuprammonium rayon for use in men's fine tailored suit jackets, sports coats and vests. With respect to the former, Consoltex's opposition reflects its claimed interest and capability of producing such fabrics. With respect to fabrics of 100 percent cuprammonium rayon, Consoltex registered its opposition on the basis that such dyed woven fabrics are available from North American production and that it had acquired The Balson-Hercules Group Ltd. (Balson-Hercules) in the United States as part of its long-term strategy for seizing opportunities created by NAFTA.

Consoltex is the major Canadian manufacturer of man-made fabrics (polyester, nylon and man-made/natural blended fabrics such as polyester/rayon, acetate/rayon, polyester/cotton, etc.). The company has been producing fabrics for more than 70 years and employs close to 1,100 persons in its Canadian manufacturing operations. Currently, Consoltex supplies mainly the Canadian and U.S. markets for linings used in women's wear with its woven polyester filament fabrics. On the other hand, its subsidiary, Balson-Hercules, supplies the majority of the U.S. market for linings used in men's wear with its acetate and cuprammonium rayon fabrics.

On the question of costs and benefits, the CTI repeated its often voiced criticism that the Tribunal staff's method of calculating costs and benefits can only lead to one possible scenario, that of benefits equalling the exact amount of customs duty that the federal government has been asked to sacrifice.

With respect to the significance of the request to investment decisions, the CTI claimed that, despite the loss of duty drawbacks to Peerless and other exporters of men's apparel, NAFTA has continued to

improve the competitiveness of that industry. Based on the its calculations, the CTI found that U.S. reductions in apparel tariffs under NAFTA outweigh the cost of the Canadian duties levied on fabrics for use as linings or the impact of the loss of any duty drawbacks. Therefore, the CTI contended that there is no need for any tariff sacrifice by the Government of Canada, especially when Peerless has an impressive export performance and the benefits would flow mainly to retailers located in the United States.

As for substitutability, the CTI argued that the claims made regarding the advantages of the subject fabrics over acetate fabrics were unconvincing. It invited the Tribunal members to recall if they had ever been influenced by the fabric used as a lining in their choice of a garment. Moreover, whether or nor it is accepted that acetate fabrics may not be substitutable for rayon fabrics at Peerless, in the CTI's view, it is unquestionable that duty-free rayon fabrics are substitutable for acetate fabrics in the market.

Finally, the CTI indicated to the Tribunal that it shared the concerns of Doubletex Inc. (Doubletex) of Montréal, which are summarized below, and that the textile industry cannot agree with or rely on Revenue Canada's statement that tariff relief could be enforced effectively at no unusual administrative costs.

Textile Converters

Doubletex advised the Tribunal that it imports 100 percent nylon and 100 percent polyester greige fabrics for finishing and selling in Canada for use as linings by manufacturers of outerwear, including men's car coats and duffel coats. Should tariff relief be recommended, Doubletex requested that the Tribunal's recommendation be extended to include unbleached and bleached fabrics of tariff item Nos. 5408.21.00 and 5408.31.00. These tariff items carry the same rates of duty as the three tariff items covering the corresponding dyed fabrics which are the subject of the request. In addition, Doubletex suggested a Tribunal review two years after any temporary order for tariff relief.

Furthermore, to allay any possibility of diversion, Doubletex suggested limiting the end use to linings for use in men's fine tailored suits, sports coats, vests and trousers only and not extending it to other men's wear, i.e. outerwear. In addition, Doubletex recommended requiring end-use certificates as an administrative control measure. Moreover, Doubletex suggested that qualification for the end use be further limited to a value for duty in excess of Doubletex's average selling price for dyed woven fabrics of the same construction as the subject fabrics. Doubletex saw this as one way of reducing the risk that the subject fabrics take business away from Canadian suppliers of linings.

Textile Importers

The staff investigation report referred to five importers contacted in the course of this investigation. Only Delight Textiles Ltd. (Delight Textiles) of Toronto replied to the Tribunal's questionnaire. Not knowing that Monterey had ceased production, it opposed the request, as it felt that granting it would badly hurt domestic production through price reduction pressures and eventually lead to the elimination of the domestically produced fabrics from the Canadian market. The remaining four importers indicated, in telephone conversations, that they had not replied for various reasons, such as the fact that they sell mostly at the retail level or that they use the fabrics for other end uses. One importer in particular, D. Zinman Textiles Ltd. of Montréal advised that it had imported acetate fabrics for use as linings.

Peerless's Response

In its response to the CTI's submission, Peerless noted, with respect to the production of identical or substitutable fabrics by Monterey, that past sales of 100 percent viscose rayon fabrics to Peerless had been "insignificant" and that Monterey, by its own admission, did not have a client base for viscose rayon fabrics. Moreover, Peerless contended that Monterey's sales of acetate fabrics and blends thereof to Canadian manufacturers of men's apparel had been limited as a proportion of its total sales. It further observed that there is no evidence to support the view that an ongoing effort to re-establish Canadian production and maintain skills is taking place.

With respect to Consoltex's proposed domestic production of fabrics for use as linings in men's trousers, Peerless remarked that Tribunal precedents have found that an interest to supply constitutes an admission that a textile input is not available. Furthermore, Peerless advanced that Consoltex's concerns may be satisfied by the creation of temporary orders and/or the filing of subsequent requests with the Tribunal. Insofar as sales of imported 100 percent cuprammonium rayon fabrics by Balson-Hercules are concerned, Peerless stated that U.S. production lies outside the Tribunal's terms of reference.

Peerless added that it wished to resist the CTI's contention that U.S. reductions in apparel tariffs confer a benefit on the competitiveness of Canadian apparel exported to the United States under NAFTA which is greater than the cost of the Canadian duties levied on fabrics for use as linings or the impact of the loss of any duty drawbacks. Peerless explained its resistance to such comparisons "for the simple reason that when the textile tariff relief procedure was introduced, the government was perfectly aware of these provisions but still recognized the need for tariff relief on fabrics not available from Canadian production." Moreover, Peerless pointed out that the elimination of duty drawbacks and U.S. tariff reductions are not related.

Peerless also replied to the CTI's contention that it is not appropriate for the government to concede revenue when Peerless is performing impressively and the financial benefit would flow to U.S. retailers and that the removal of the duties on fabrics that are not available from Canadian production is not a tariff revenue transfer, but a necessary means of retaining apparel production in Canada. This is accomplished by allowing apparel manufacturers to pass on savings to retailers and, in today's fierce retail environment, eventually to consumers. This, in turn, allows Canadian apparel manufacturers to compete and to increase production and exports.

To the CTI's claim that duty-free rayon fabrics would be unquestionably substitutable for Monterey's acetate fabrics in the market, Peerless replied that, even free of duty, rayon fabrics are more expensive than acetate fabrics.

Finally, insofar as Doubletex's and the CTI's observations on the administration of an end-use tariff code covering the subject fabrics are concerned, Peerless referred the Tribunal to the record for Revenue Canada's recommended nomenclature of a possible end-use tariff code. Moreover, Peerless added that the Canadian tariff regime is characterized by "hundreds and hundreds" of end-use provisions. Finally, Peerless pointed out that Doubletex neither converted nor sold the subject fabrics.

Departments

The Department of Foreign Affairs and International Trade informed the Tribunal that the Government of Canada does not maintain quota restraints on fabrics classified under classification Nos. 5408.22.10.00 (containing more than 85 percent cuprammonium rayon) and 5408.22.90.90 (containing more than 85 percent viscose rayon). On the other hand, quota restrictions are maintained on dyed woven fabrics of viscose rayon and polyester of classification No. 5408.32.00.90 (containing less than 85 percent cuprammonium rayon and viscose rayon) imported from Poland, the Republic of Korea and Taiwan.

The Minister for International Trade has advised that ex-quota entry on textile inputs will be considered where a recommendation has been made by the Tribunal to remove the customs tariff on the basis of non-availability. Ex-quota treatment, however, will be granted only in cases where it can be demonstrated that there is an extra charge for using textile inputs under quota or where textile inputs are not available in Canada.

The Tribunal also received comments from the Department of Industry on potential Canadian fabric producers and from Revenue Canada indicating that there would not be any costs, over and above those already incurred by it, to administer the tariff relief, should it be granted. In that event, Revenue Canada suggested using a new tariff code with the following specific description, which would permit distinguishing the subject fabrics from others that would be classified under a tariff item without an end-use designation:

> *Woven fabrics, of rayon filament yarns or mainly rayon filament yarns mixed with polyester filament yarns measuring less than 200 decitex, of a weight not exceeding 100 g/m², of subheading [No.] 5408.22 or 5408.32, for use in the manufacture of men's suits, jackets, blazers, trousers, shorts and vests.*

ANALYSIS

The Tribunal has considered all the facts made available by the investigation and the position of parties. According to the Minister's terms of reference, the Tribunal is to determine if textile inputs, identical to or substitutable for those imported and for which tariff relief is requested, are produced in Canada and to respond to the request by advising the Minister of the net economic benefit of granting or denying tariff relief. On the first point, the Tribunal found that identical or substitutable fabrics are not produced in Canada for the reasons described below, and this brought the Tribunal to conclude, on the second point, that granting tariff relief would entail net benefits to Canada.

As the record indicates, it is an indisputable fact that identical fabrics are not currently produced in Canada. Nevertheless, the CTI requested the Tribunal not to recommend tariff relief. In the case of Monterey, this was because of recent efforts to resume production under new ownership. With respect to Consoltex, however, the CTI's argument was in favour of an existing and operational company which has the potential to produce one of the subject fabrics.

The Tribunal, in weighing whether existing or potential production should be considered, is guided by its terms of reference and its past practice. In the case of existing production, in its consideration, the Tribunal bears in mind such things as industry sourcing patterns/market share; history of company sales;

marketing and service history; repeat orders; delivery and other technical requirements. As for potential production, in considering the ability of domestic producers, vis-à-vis foreign producers, to serve the Canadian downstream industries, the Tribunal is generally guided by evidence of investment and business plans indicating the imminent establishment of production. Nothing in the record has demonstrated to the satisfaction of the Tribunal that any Canadian textile producer has concrete plans to enter into the production of the subject fabrics in the foreseeable future. Should production commence at Consoltex or resume at Monterey or its successors, the Tribunal would be prepared to consider a request to revisit the matter.

The Tribunal has also noted Consoltex's reference to its U.S. subsidiary which converts woven fabrics of 100 percent cuprammonium rayon and which is willing to export them to Canada. Consoltex requested that these fabrics be considered as identical or substitutable fabrics. However, the Tribunal cannot consider this proposal, as it falls outside its terms of reference because it involves fabrics produced and purchased outside Canada.

In the case of Monterey, even if past production of its fabrics for use as linings had continued unchanged, the record shows that, insofar as the 100 percent viscose rayon fabrics are concerned, Monterey had been incapable of producing them economically for some time. It had only agreed to produce them on a custom-made basis at Peerless's request and, even at that, only on condition of receiving a long-term price commitment. Monterey had not, in fact, sold any 100 percent viscose rayon fabrics to Peerless since 1993. With respect to fabrics of 100 percent acetate and of blends of acetate and cuprammonium rayon or viscose rayon, the weight of the evidence on the record indicates that they are not substitutable for fabrics of 100 percent cuprammonium rayon or 100 percent viscose rayon. Moreover, the record shows that such acetate fabrics were not purchased by Peerless, Coppley or Samuelsohn, which preferred paying duty on higher-priced imports to purchasing Monterey's fabrics which contained the lower-cost acetate. These users were seeking the advantages inherent in rayon fabrics which, as shown by the record, are not found in acetate fabrics. The advantages were described in terms of compatibility with Peerless's production process for greater manufacturing efficiency or with the users' positioning of their products in the market with greater aesthetic and wearability qualities. Finally, the record shows that, while Weston had opted for less costly 100 percent acetate fabrics, it nevertheless recognized the advantages of 100 percent viscose rayon fabrics over 100 percent acetate fabrics.

Having determined that identical or substitutable fabrics are not produced in Canada, the Tribunal now turns to the second major element of its terms of reference, the maximization of the net economic gains to Canada.

The Tribunal took note of the CTI's description of the central issue in this case as being whether the Government of Canada should transfer a substantial amount of tariff revenue to retailers in the United States and Canada by means which would preclude the re-establishment of substantial Canadian fabric production "destroyed in September 1995 by the financial failure of Monterey." The Tribunal's position on future production has already been made clear. With respect to the transfer of revenue to retailers, whether in Canada or the United States, the Tribunal agrees with Peerless's position that the removal of duties on fabrics not available from Canadian production is not a tariff revenue transfer, but a means of becoming more competitive in apparel production in Canada.

With respect to the CTI's argument that Peerless's loss of the duty drawbacks on exports to the United States is more than offset by the substantial reduction in U.S. rates on imports of men's apparel from Canada since 1988, the Tribunal notes that Peerless, as well as other Canadian producers of men's apparel, has benefited from the reduction in U.S. rates. However, the Tribunal also notes that, with the gradual elimination of duty drawbacks, these exporters are facing an increase in input costs of over $1.5 million for the payment of Canadian duties on fabrics not available from Canadian production.

With respect to the issue of greige fabrics, the Tribunal's notice of investigation referred only to finished fabrics. As a result, the Tribunal did not receive any information regarding greige fabrics. Nevertheless, the Tribunal understands Doubletex's concerns and is prepared to bring them to the attention of the Minister. Moreover, the Tribunal agrees with Doubletex's position that tariff relief on the finished fabrics should be limited to use in the production of men's fine tailored suits, sports coats, vests and trousers. However, unlike Doubletex or the CTI, the Tribunal is satisfied with the assurance of Revenue Canada that the end-use tariff code that it suggests can be administered in a cost-effective manner and still prevent diversion to other uses without the need to resort to the preventative controls advanced by Doubletex.

In sum, on the basis of the record, the Tribunal is satisfied that there is no Canadian production of identical or substitutable fabrics and considers it important that tariff relief be granted so as not to burden Canadian apparel manufacturers with additional input costs related to fabrics not available in Canada. Nevertheless, by its recommendation, the Tribunal does not wish to preclude future production. Should the Minister grant tariff relief pursuant to the Tribunal's recommendation and should a Canadian producer commence production of fabrics identical to or substitutable for the subject fabrics, that producer may request, at any time, the commencement of an investigation for the purpose of recommending the amendment of an order. In addition, with respect to dyed woven fabrics of 56 percent viscose rayon and 44 percent polyester, in order to allow Consoltex the opportunity to plan production and generate sales, the Tribunal is recommending tariff relief for a period of two years. Peerless and other Canadian users are free, of course, to apply for tariff relief for an indeterminate period after that time, if Consoltex's intentions do not materialize.

RECOMMENDATION

In light of the foregoing, the Tribunal hereby recommends to the Minister that the customs duty on importations of

> woven fabrics, of cuprammonium rayon filament yarns and viscose rayon filament yarns measuring less than 200 decitex, of a weight not exceeding 100 g/m², of tariff item Nos. 5408.22.10 and 5408.22.90, respectively, for use in the manufacture of men's suits, jackets, blazers and vests,

be removed for an indeterminate period and that the customs duty on importations of

> woven fabrics, mainly of rayon filament yarns mixed with polyester filament yarns measuring less than 200 decitex, of a weight not exceeding 100 g/m², of tariff item No. 5408.32.00, for use in the manufacture of men's trousers,

be removed for a period of two years.

Should the Minister grant tariff relief pursuant to the Tribunal's recommendation and should a Canadian producer commence production of fabrics identical to or substitutable for the subject fabrics, that producer may request the commencement of an investigation for the purpose of recommending the amendment of an order.

Although its recommendation for tariff relief is restricted to finished fabrics, the Tribunal recognizes the concerns expressed by Doubletex relating to the potential creation of a tariff anomaly for imports of otherwise identical greige fabrics. While it has refrained from making any recommendation about tariff relief for those greige fabrics, the Minister, in considering whether to implement the Tribunal's recommendation on finished fabrics, may wish to consult with potential domestic producers of greige fabrics to determine whether there is any valid objection to similar tariff relief on imports of greige fabrics. In any event, any domestic manufacturer that wishes to seek tariff relief on imports of greige fabrics may file a request with the Tribunal.

Arthur B. Trudeau
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Presiding Member

Lise Bergeron
Lise Bergeron
Member

Lyle M. Russell
Lyle M. Russell
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