

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
PEERLESS CLOTHING INC.
REGARDING
CERTAIN WOVEN POLYESTER FABRICS**

MARCH 24, 1999

PEERLESS CLOTHING INC.

REQUEST NO.: TR-98-016

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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 with respect to those requests to the Minister.

Pursuant to the Minister's reference, the Tribunal received a request on December 2, 1998, 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 twill weave fabrics, solely of non-textured polyester, with a suede-like finish, for use in the manufacture of men's jackets and blazers (the subject fabrics). Peerless also asked that its request be dealt with within a 60-day time frame rather than the usual 120-day time frame.

On January 21, 1999, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation which was distributed and published in the January 30, 1999, edition of the *Canada Gazette*, Part I.³ The notice advised that, subject to opposition from interested parties, the Tribunal intended to comply with Peerless's request for an expedited investigation.

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. The Tribunal also sent questionnaires to several major producers of suede leather, to a number of potential importers of the subject fabrics and to a number of domestic apparel manufacturers that allegedly produce men's jackets and blazers using identical or substitutable fabrics.

The Department of National Revenue (Revenue Canada) was asked to provide details of the laboratory analysis that it had carried out on the subject fabrics and a suggested definition of the subject fabrics that could be administered by it. The Department of Foreign Affairs and International Trade (DFAIT) was asked to provide current information on any quantitative import restrictions on the subject fabrics, and the Department of Industry and the Department of Finance were informed of the request and asked to provide any relevant comments.

In view of the lack of opposition from interested parties to the request for tariff relief, the Tribunal provided the parties with a summary of the submissions that it had received and indicated its intention to forgo the distribution of a staff investigation report and, instead, to report directly to the Minister. All parties were given an opportunity to respond to the Tribunal's intention to proceed directly to the report stage.

A public hearing was not held for this investigation.

PRODUCT INFORMATION

In the notice of commencement of investigation, the subject fabrics (which are known in the trade as "faux suede" fabrics) were described as twill weave fabrics, solely of non-textured polyester, with a suede-like finish, for use in the manufacture of men's jackets and blazers. A more detailed technical

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1. On March 20 and July 24, 1996, and on November 26, 1997, the Minister of Finance revised the terms of reference.
 2. R.S.C. 1985, c. 47 (4th Supp.).
 3. Vol. 133, No. 5 at 195.

description, which was also included in the notice, provided information on the yarn sizes, fabric construction, fabric weight, etc. of the sample which Revenue Canada analyzed.

Revenue Canada advised that the subject fabrics fall under classification No. 5407.93.90.82 and are currently dutiable at 16 percent ad valorem under the MFN tariff and at 10 percent ad valorem under the Chile tariff and are duty free under the US tariff, the Mexico tariff and the Canada-Israel Agreement tariff.

REPRESENTATIONS

Users of the Subject Fabrics

Peerless

Peerless, founded in Montréal in 1919, claims to be Canada's largest manufacturer of men's fine tailored clothing, including men's tailored suits, sport jackets, blazers, tuxedos, trousers, vests and walking shorts.

Peerless alleges that fabrics identical to or substitutable for the subject fabrics are not produced in Canada. It contends that expensive, very specialized equipment is required to produce the subject fabrics, which is one of the main reasons that these fabrics are available solely from Asia, primarily from the Republic of Korea (Korea).

Peerless contends that tariff relief will have a very large impact on its sales volume. Tariff relief would allow it to lower its wholesale prices significantly, thereby giving it an important advantage in today's highly competitive marketplace. It further contends that all cost savings will be passed on to the consumer.

S. Cohen Inc.

S. Cohen Inc. (Cohen), founded 75 years ago in Montréal, is a major Canadian manufacturer of men's tailored suits, jackets, coats and trousers and its production facility is located in Sainte-Thérèse, Quebec. All of its production of jackets and blazers made from the subject fabrics is sold in Canada.

Cohen supports Peerless's request for tariff relief. It does not know of any fabrics produced domestically which it considers identical to or substitutable for the subject fabrics.

Cohen submits that tariff relief will allow it to compete at a competitive price point with foreign imports and thereby maintain its market presence. Cohen is not a direct importer of the subject fabrics, but purchases faux suede from a wholesaler/importer of the subject fabrics from Korea.

Weston Apparel Manufacturing

Weston Apparel Manufacturing (Weston), a division of Dylex Ltd., manufactures apparel primarily for Tip Top Tailors, a retail division of Dylex Ltd., but also exports apparel to the United States.

Weston supports Peerless's request for tariff relief, noting that the subject fabrics have been listed in its stores with great success and have been sampled in the United States as well, where they have to compete with other offshore imports. Weston states that identical or substitutable fabrics are not available from domestic manufacturers.

In Weston's view, the subject fabrics are unique and unlike any domestically produced fabrics. Tariff relief of 16 percent could have a large impact on sales, as it would likely lead to increased production

of jackets and blazers at Weston's facility in Canada. Weston does not foresee that it would experience any competitive disadvantage if tariff relief were granted on the subject fabrics; instead, it noted that the recent elimination of Canada's duty drawback provisions on exports to the United States had made it less competitive in that market.

Domestic Producers of Allegedly Identical or Substitutable Fabrics

Consoltex Inc.

Consoltex Inc. (Consoltex) of Montréal, a major Canadian producer of man-made fabrics, did not oppose Peerless's request for tariff relief on the subject fabrics.

However, in order to be assured that only the subject fabrics would receive special tariff treatment, Consoltex had three conditions: (1) that a more precise description of the construction of these fabrics be used to include precisions such as their yarn composition; (2) that a reference be included to describe how the "sueded" look is applied to the fabrics, since Consoltex produces fabrics which have a sueded look; and (3) that the definition indicate a price point, which would exclude cheaper fabrics that otherwise meet the definition, thereby precluding tariff relief to non subject fabrics.

Doubletex

Doubletex is a domestic importer and converter of fabrics with plants in several locations in Canada.

Doubletex neither responded to the Tribunal's notice of commencement of investigation nor submitted a domestic producer's questionnaire. In response to a telephone inquiry by Tribunal research staff, Doubletex stated that it did not oppose the request for tariff relief and that it would not be responding further on this issue.

Dominion Tanners

Dominion Tanners, Division of United Canadian Shares Limited, of North York, Ontario, produces leather and suede at its facility in Winnipeg, Manitoba. It does not oppose the request for tariff relief on the subject fabrics.

A.R. Clarke Limited

A.R. Clarke Limited manufactures leather and suede at its production facility in Toronto, Ontario. It does not oppose the request for tariff relief on the subject fabrics.

Other Representations

Koenig, Simon Inc.

Koenig, Simon Inc. (Koenig) is a wholesaler/importer of the subject fabrics from Korea. Koenig supports the request for tariff relief on the subject fabrics, provided the description of these fabrics is sufficiently broad to encompass the faux suede fabrics that it imports and not just the specific fabrics for which Peerless has requested tariff relief. In other words, it prefers the definition of the subject fabrics contained in the Tribunal's notice of commencement of investigation, which Revenue Canada recommended, to the more detailed technical description contained in the Revenue Canada's laboratory analysis.

Canadian Textiles Institute

The Canadian Textiles Institute (CTI) argues that the description forming the basis of Peerless's request does not differentiate between the fabrics being imported by Peerless and those with a "sueded finish" produced in Canada by both Consoltex and Doubletex. It supports Consoltex's suggestion for a more precise description of how the suede look is applied to the subject fabrics, as well as for the use of a minimum price point. Furthermore, the CTI suggests that any recommendation arising from the investigation be limited to a period "not significantly longer than one year," in light of Peerless's contention that the market opportunity for these fabrics is time-limited.

OTHER INFORMATION

DFAIT informed the Tribunal that Canada maintains quotas on polyester filament fabric, including any fabric mixed mainly or solely with polyester filaments, imported from the Republic of Poland, Korea and Taiwan. This coverage includes the subject fabrics of classification No. 5407.93.90.82. Bilateral agreements provide for these restrictions: the agreement between the Government of Canada and the Government of Korea and the Taiwan Textile Federation have been in place since 1978; the agreement between the Government of Canada and the Government of the Republic of Poland has been in place since 1979.

Revenue Canada stated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief requested for the subject fabrics.

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 doing so, to take into account all relevant factors, including the substitutability of imported textile inputs for domestic textile inputs and the ability of domestic producers to serve the Canadian downstream industries.

Consoltex was the only domestic textile producer to respond to the Tribunal's notice of commencement of investigation. In its submission, Consoltex declared that it would not oppose Peerless's request for tariff relief on the subject fabrics. At the same time, in order to be assured that only the particular fabrics covered by Peerless's request would receive the special tariff treatment, Consoltex requested that a more precise description of the construction of the subject fabrics include yarn composition, a description of how the "sueded" look is applied to the fabrics and a price point which would exclude cheaper fabrics that otherwise meet the definition, thereby precluding tariff relief to non subject fabrics. Other than this statement, Consoltex provided no information in support of its proposal.

The Tribunal considered Consoltex's request on these issues. However, Consoltex did not provide any information to the Tribunal to support its statement that it "has fabrics, which have a 'sueded' look."⁴

In a number of previous cases, the Tribunal has indicated that it is the responsibility of domestic producers to provide evidence of their ability to produce identical or substitutable fabrics. Accordingly, in the absence of any samples or other substantiating information of actual production of identical or substitutable fabrics, the Tribunal is not prepared, in this case, to alter the product description provided by Revenue Canada or to include a price point in the product description of the subject fabrics. The Tribunal has not been presented with any information from which it could conclude that domestic production of fabrics identical to or substitutable for the subject fabrics exists or that such production might, in any way, be injured by the

4. Written observation, January 27, 1999.

importation of the subject fabrics, no matter how they are constructed or at what price point they are sold. Domestic textile industry submissions contained no evidence to convince the Tribunal that such revisions are warranted.

However, the Tribunal would be prepared to consider a request for a review of its recommendation in this case if, in the future, the domestic industry is in a position to provide evidence that it is able to produce and sell commercial quantities of identical or substitutable fabrics. In the Tribunal's view, a request for review would also be a more appropriate mechanism than the limited time period for tariff relief, which was suggested by the CTI. The Tribunal sees no reason to restrict the duration of its recommendation in the absence of any evidence of current or impending domestic production of identical or substitutable fabrics.

Turning to the issue of net economic impact, the Tribunal has concluded that, based on the information available to it, there would be no cost to the domestic textile industry if the requested tariff relief were granted. Moreover, the submissions and information on file indicate that tariff relief on the subject fabrics would provide a benefit in excess of \$500,000 per annum to both Peerless and a number of other domestic apparel manufacturers using similar imported fabrics in the production of men's jackets and blazers. Tariff relief would enhance the competitiveness of these Canadian producers and allow them to compete more effectively in the US and Canadian markets.

Accordingly, the Tribunal finds that the tariff relief requested by Peerless would provide net economic gains to Canada.

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 twill weave fabrics, solely of non-textured polyester, with a suede-like finish, of subheading No. 5407.93, for use in the manufacture of men's jackets and blazers.

Patricia M. Close
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Presiding Member

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Richard Lafontaine
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