

**REPORT TO
THE MINISTER OF FINANCE**

**REQUESTS FOR TARIFF RELIEF BY
JONES APPAREL GROUP CANADA INC.
REGARDING
RAYON/POLYESTER WOVEN FABRICS**

JULY 8, 1999

REQUEST NO. : TR-98-017

JONES APPAREL GROUP CANADA INC.

Tribunal Member: Anita Szlajak, Presiding Member

Research Director: Réal Roy

Researcher: Peter Rakowski

Statistician: Lise Lacombe

Counsel for the Tribunal: Michèle Hurteau

Registration and Distribution Officer: Claudette Friesen

Address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

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, on February 5, 1999, the Tribunal received a request from the Jones Apparel Group Canada Inc. (Jones), of Vaughan, Ontario, for the removal, for an indeterminate period of time, of the customs duty on certain rayon/polyester woven fabrics for use in the manufacture of women's jackets, blazers, dresses, skirts, trousers, shorts, culottes and waistcoats. As part of its request, Jones sought tariff relief retroactive to July 1, 1998.

On March 12, 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 March 20, 1999, edition of the *Canada Gazette*, Part I.³ In the notice of commencement of investigation, the fabrics for which tariff relief was sought are described as "rayon/polyester woven fabrics, of Tariff Item Nos. 5408.32.90, 5408.33.90 and 5408.34.90, dyed, printed or made of yarns of different colours, consisting predominantly of rayon filaments, blended solely with polyester filaments, with an average yarn twist of 1500 or more turns per metre in the warp and the weft, of a weight of 200 g/m² or more but not exceeding 325 g/m², with a value for duty of \$9.00/m² or more, for use in the manufacture of women's jackets, blazers, dresses, skirts, trousers, shorts, culottes and waistcoats (the subject fabrics)."

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of identical or substitutable fabrics. Questionnaires also were sent to potential users/importers of the subject fabrics. A letter and a sample of the subject fabrics were sent to the Department of National Revenue (Revenue Canada) with a request for its advice as to the tariff classification of the subject fabrics and an analysis of the sample's technical characteristics. In addition, 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 was informed of the requests and asked to provide any relevant comments. The Department of Finance also was informed of the request.

A staff investigation report, summarizing the information received from these departments, Jones and other interested parties, was provided to those parties that had filed notices of appearance in the investigation.

A public hearing was not held for this investigation.

PRODUCT INFORMATION

The subject fabrics are used in the manufacture of women's jackets, blazers, dresses, skirts, trousers, shorts, culottes and waistcoats. These fabrics are high-twist woven fabrics made of rayon and polyester, and

-
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. 12 at 774.

they are woven from very fine spun yarns. The subject fabrics also have a distinctive “hand” or feel and are very crease-resistant. They are all-season fabrics and, yet, are relatively light.

Revenue Canada advised the Tribunal that the subject fabrics are classified under tariff item Nos. 5408.32.90, 5408.33.90 and 5408.34.90 and currently are dutiable at 16 percent *ad valorem* under the MFN Tariff, at 10 percent *ad valorem* under the Chile Tariff, and are free under the United States Tariff, the Mexico Tariff and the Canada-Israel Agreement Tariff.

REPRESENTATIONS

Requester

Jones

Jones, located in Vaughan, Ontario, has been in business in the United States for 28 years and in Canada for 15 years. Jones submitted that it is growing rapidly in the Canadian market and its future employment and investment growth prospects in Canada are excellent. It further alleged that, in order to sustain and grow the Canadian business, it is important that its Canadian apparel production be as competitive as possible. Tariffs on fabrics unavailable in Canada and the United States and which must be sourced from a small number of mills in Japan are a key competitive factor.

Jones claimed that the subject fabrics are woven from very fine yarns that are exclusive to one mill in Japan. Jones suggested that it may be technically impossible for Canadian mills to weave these fabrics or to source the yarn essential for producing this fabric in Canada. The company further submitted that the subject fabrics are relatively expensive, with landed costs in excess of \$9/m².

Jones maintained that the subject fabrics have a distinctive “hand” or feel, making them crease-resistant, an attribute usually associated with treated or coated fabrics. Jones further submitted that it gave swatches of this fabric to both Cleyn & Tinker Inc. (Cleyn & Tinker) and Consoltex Inc. (Consoltex). Both companies admitted that they could not make this fabric.

Jones argued that Consoltex’s fabrics occupy a more moderate section of the market and differ technically from the subject fabrics. Jones noted that the subject fabrics have a twist of over 1,500 turns in the warp **and** the weft, whereas the Consoltex fabrics do not have anything similar. Jones added that Consoltex’s high-twist fabrics sell for much less than the subject fabrics and, thus, tariff relief would have no impact on Consoltex because, even with the duty removed, Consoltex’s fabrics would remain much less expensive.

Jones contended that, although the fabrics in this case and those that were the subject of Review No. TA-97-001⁴ (i.e. certain dyed woven fabrics of polyester and rayon) are high-twist fabrics, the current request is for high-priced fabrics with over 1,500 turns in the warp **and** the weft, which are for a particular end use. Jones asserted that Review No. TA-97-001 involved fabrics that were much closer in price point and technical specifications to Consoltex’s fabrics than those of the present case.

4. *Report to the Minister of Finance - Review of the Recommendation regarding Woven Fabrics known as “Armani Gabardine”*, February 26, 1998.

Regarding Consoltex's allegations concerning yarn exclusivity, Jones stated that the fact that Consoltex was able to locate comparable yarns from other parts of the world indicates that there is no exclusivity for the yarns used to produce the subject fabrics and shows the competitive nature of the business. In response to the allegation that Jones controls its Japanese suppliers, Jones stated that this is unsupported by facts and that there is nothing in the fabric definition which implies or forces exclusivity.

While Consoltex alleged that it cannot make the fabrics because it cannot source the yarn at a competitive price, thereby incurring an opportunity cost in the form of lost sales and margins, Jones argued that Consoltex cannot claim lost sales and margins if it cannot make the product.

Jones submitted that, to its knowledge, no Canadian textile mill makes a high-twist rayon/polyester fabric with over 1,500 turns per metre in both the warp and the weft. According to Jones, eliminating tariffs would benefit Canadian apparel manufacturers at no extra cost to the Canadian textile industry.

Finally, Jones dismissed the CTI argument that tariff elimination would bring the subject fabrics into competition with domestic and imported fabrics currently used in more-popularly priced apparel. Jones argued that this is not true since it is the brand, design or label of the finished garment, within a specific price point, that is the foundation for store segmentation.

Domestic Users/Importers of the Subject Fabrics

Creations D'Oraz Ltd. (D'Oraz)

D'Oraz stated that it currently does not use the fabrics of tariff item Nos. 5408.32.90, 5408.33.90 and 5408.34.90, and did not respond to the Tribunal's questionnaire. However, it strongly supported the request for tariff relief on the basis that these fabrics might be used in its collections in the near future.

Louben Sportswear Inc. (Louben)

Although Louben stated that it currently does not import the subject fabrics and did not respond to the Tribunal's questionnaire, it supported the request for tariff relief on the basis that it might import subject fabrics in the future.

Nygård International (Nygård)

Nygård stated that it was not manufacturing garments using the subject fabrics and would not complete the questionnaire. It also stated that it would not oppose the request for duty relief.

Domestic Producers of Alleged Substitutable Fabrics

Consoltex

Consoltex is headquartered in Ville St. Laurent, Quebec, and employs about 500 people.

Consoltex submitted that it has made important investments in equipment and product development for the production of fabrics made of high-twist yarns. According to Consoltex, 15 months ago, its high-twist product range included only 4 fabrics, while now it has 18 high twist fabrics in production and it expects that number to grow. It alleged that market response to date has been strong in the United States and weaker in

Canada. It forecasted that, in 1999, its average prices will increase, reflecting the higher value of recently developed fabrics.

Consoltex opposed the request for tariff relief on what it calls a “specific high twist fabric” because it represents a major opportunity for expanded sales in the high-twist market, which it entered actively in 1997. Consoltex submitted that it is extremely interested in supplying Jones with what it estimates are significant volumes. It stated that, assuming yarn availability at a fair price, it is confident in its ability to produce an identical fabric successfully.

Consoltex submitted that the Tribunal recognized its progress in its Report to the Minister of Finance in Review No. TA-97-001⁵ when it stated that the evidence showed that Consoltex has established a commercial supply of high-twist yarns, invested in facilities for the weaving of those yarns and introduced four fabrics produced from those yarns. Moreover, in the same report, the Tribunal was also of the opinion that Consoltex would continue to develop and have available for sale other fabrics produced from high-twist yarns in the near future.

Consoltex alleged that it provided Jones with samples of a number of high-twist fabrics, but received little or no business from Jones. Consoltex also submitted five sample fabrics to the Tribunal, to show that it is capable of producing high-twist fabrics.

Consoltex further submitted that, in view of the potential business for the subject fabrics, it obtained price and delivery quotations on a yarn having a twist of at least 1,600 turns per metre that could be used to make identical fabrics. However, it stated, the one price it received was unrealistic and sourcing that yarn would have been almost as expensive as the imported fabric.

Cleyn & Tinker

Cleyn & Tinker indicated that it had no interest in the case and would not be submitting a response to the questionnaire.

Other Submissions

Canadian Textiles Institute (the CTI)

The CTI claimed that the subject fabrics are controlled from abroad by means of exclusive supply arrangements, that Jones appears to have exclusive Canadian rights to the subject fabrics and that eliminating the MFN Tariff in Canada would only further enhance Jones’ profits. The CTI maintained that tariffs should not be eliminated and that customs revenues should not be foregone simply because a foreign competitor restricts the supply or availability of essential materials to an industry in Canada.

The CTI argued that the imported subject fabrics are likely to appear in larger volumes in the future if the MFN Tariff is eliminated. Thus, tariff elimination would bring the subject fabrics into competition with the fabrics currently used in more-popularly priced apparel.

5. *Ibid.* at 7.

According to the CTI, Jones ruled out the possibility of substituting Canadian fabrics for the subject fabrics and expressed its doubt that the domestic industry is competent to make fabrics in a higher price range. This, the CTI submitted, is inappropriate since the price of Consoltex's fabrics is moving upwards.

The CTI submitted that the product description found in the notice of commencement of investigation includes two tariff items for which neither sample nor evidence was provided. Thus, it argued, the domestic industry faces the risk of losing tariff protection for tariff items important to it and, specifically, to Consoltex.

The CTI also suggested that the question for the Tribunal in the present case is whether a competent domestic manufacturer with recent accomplishments in the production of high twist-woven fabrics will have the chance to compete for this business in a normal tariff environment, or whether it will lose that chance in a tariff environment granting relief to enhance the profits of Jones and its offshore suppliers.

On the basis of the reasons stated above, the CTI urged the Tribunal to reject the request for tariff relief.

The Canadian Apparel Manufacturers Institute (CAMI)

CAMI filed a submission on behalf of members of the Canadian Apparel Federation (CAF). CAF fully supports the position of the requester that identical or substitutable fabrics for the subject fabrics are not available from domestic textile manufacturers and that tariff relief should be granted on the subject fabrics.

CAF argued that the subject fabrics, at about \$9/m², are very expensive, are considerably above the cost of comparable fabrics available from Canadian textile manufacturers, are unique and are unavailable domestically.

While Consoltex claimed to have the ability to make identical fabrics, CAF pointed out that this is only on the condition that the yarn producer will sell it the necessary yarns. However, CAF submitted, the evidence is clear that domestic manufacturers have not been and are not currently capable of satisfying the market demand for the subject fabrics. Furthermore, CAF argued, if retailers are unable to obtain what they want domestically, they will take their business offshore and, with it, Canadian jobs.

CAF submitted that, under the terms of reference, the economic impact, both on domestic textile producers as well as downstream producers (on a commercial cost/benefit basis), of reducing the tariff must be assessed. CAF also submitted that other factors, such as the ability of domestic producers to serve the Canadian downstream industries (bearing in mind such things as delivery and other technical requirements), should be considered as well. Accordingly, CAF suggested that, before it rejects this request, the Tribunal should be convinced that Consoltex has the ability to produce fabrics identical to or substitutable for the subject fabrics in commercial quantities, at a price that would ensure market acceptance. CAF claimed that there is no evidence to confirm this fact.

With reference to Consoltex's allegations of lost opportunity, CAF submitted that, if the Tribunal accepts the opportunity-cost argument that the CTI advanced, then any textile manufacturer only has to establish its "anticipation" of production and point to the opportunity cost of unfilled expectations to convince the Tribunal to deny every request for tariff relief. Such a decision would create a serious precedent, whereby all requests for relief under the reference could be denied on prospective opportunities or similar grounds.

According to CAF, the opportunity-cost concept should be dismissed because the granting of tariff relief represents a zero cost to domestic manufacturers and would provide significant benefits to Jones. Accordingly, CAF maintains that tariff relief should be granted until such time as the domestic industry is capable of supplying the market.

ANALYSIS

The terms of reference direct the Tribunal to evaluate the economic impact that reducing or removing a tariff would have on domestic textile producers and downstream producers and, in so doing, to consider all relevant factors, such as the substitutability of an imported fabric with a domestic fabric, the ability of domestic fabric producers to serve Canadian downstream industries, and the competitiveness of those downstream industries at home and abroad. Consequently, any recommendation by the Tribunal for tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

Jones' request covers a specific type of fabric, i.e. a rayon/polyester fabric with an average twist of 1,500 or more turns in the warp and the weft, of a weight of 200g/m² or more but not exceeding 325g/m², and with a value for duty of \$9.00/m² or more. These fabrics are used to produce quality women's apparel. Jones claimed that there are no domestic fabrics identical to or substitutable for the subject fabrics and that both Consoltex and Cleyn & Tinker admitted that they do not currently make this fabric. Jones also argued that eliminating the tariff will help it to stay competitive and to keep jobs in Canada. In addition, CAF supported the request on the basis that the subject fabrics are not available from domestic manufacturers.

Consoltex is the only domestic manufacturer opposing this request. It is the largest Canadian producer of woven man-made fabrics and produces nylon, polyester, polyester/cotton, polyester/nylon, polyester/rayon, nylon/cotton, acetate/rayon and other blends for the apparel market as well as for the household, industrial and non-apparel markets. It mainly argues that it can produce a fabric identical to or substitutable for the subject fabrics, provided it can get the yarn, and that granting of the request would cause it to incur a significant lost opportunity that could result in future lost sales and margins.

The CTI, on behalf of the domestic textile industry, urged the Tribunal to reject the request on the basis that Jones appears to have exclusive rights to the subject fabrics and it should not eliminate tariffs and forego customs revenues simply because a foreign competitor restricts the supply or availability of essential materials to an industry in Canada. According to the CTI, granting the request for tariff relief would cause the domestic industry (i.e. Consoltex) to incur an opportunity cost and would serve only to enhance the profits of Jones and its offshore suppliers.

Regarding Consoltex's submission that it can produce an identical fabric, the Tribunal observes that this is conditional upon Consoltex sourcing the yarn at a viable price. Although Consoltex has provided evidence that it may be able to source the yarn, it has not furnished any evidence to support its claim that the yarn would be at a "viable price", or that it would be able to weave the yarns into an identical or substitutable fabric. In fact, Consoltex submitted, it was quoted a price for the yarn so unrealistic that the yarn would be almost as expensive as the imported fabric.

In a number of previous cases,⁶ the Tribunal has indicated that it is the responsibility of the domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable fabrics. Accordingly, in the absence of further evidence, the Tribunal is not persuaded that Consoltex currently is capable of supplying commercial quantities of domestically produced fabrics identical to or substitutable for the subject fabrics. On this basis, the Tribunal does not accept Consoltex's claim of lost opportunities in the form of future lost sales and margins if the request is granted. Nevertheless, if tariff relief is granted, the Tribunal would be prepared to consider a request for a review in the future, whenever Consoltex is in a position to provide evidence that it is able to produce and sell commercial quantities of fabrics that are identical to or substitutable for the subject fabrics.

Consoltex also maintained that it already is established in the high-twist yarn business, as the Tribunal indicated in Review No. TA-97-001. While the Tribunal accepts that Consoltex can and does produce fabrics made of high-twist yarns, the Tribunal notes that none of the Consoltex high-twist samples provided for this case met the yarn-twist specifications of the subject fabrics described in the notice of commencement of investigation (i.e. 1,500 turns or more per metre in both the warp and the weft). Accordingly, the Tribunal is of the view that Consoltex has provided no evidence that it is capable of producing fabrics identical to or substitutable for the subject fabrics.

Turning to the cost benefit analysis, Consoltex alleged that the granting of tariff relief could lead to substantial opportunity costs in the form of lost sales and margins. As noted above, the Tribunal already has rejected this argument until such time as Consoltex can demonstrate that it is able to produce fabrics identical to or substitutable for the subject fabrics. Accordingly, the Tribunal finds that Consoltex's allegations about the costs of granting tariff relief are without merit.

The benefits of granting this request could exceed \$200,000 per year. This would enable Jones to expand its business and maintain employment in Canada. Furthermore, both D'Oraz and Louben supported the request for duty relief on the basis that they might import these fabrics in the near future, and Nygård did not oppose the request. Accordingly, the Tribunal finds that there will be net economic gains to Canada should tariff relief be granted.

Finally, concerning the CTI's submission that the Tribunal widened the scope of the request by including three tariff items in the product description rather than the sole tariff item covered by the sample that Jones submitted, and that the industry could lose the benefits of these three tariff items, the Tribunal notes the following about these tariff items: (1) they were mentioned in Jones' request; (2) they cover similar goods that are dyed, printed or made of yarns of different colours; and (3) they will be subject, upon importation, to the same restrictions as the other fabrics covered by the Tribunal's recommendation (i.e. composition, tariff item, twist factor, weight, price and end use). Accordingly, the Tribunal is of the view that this recommendation will not cause the industry to lose the benefit of the existing tariff items.

6. See, for example, *Report to the Minister of Finance: Request for Tariff Relief by Camp Mate Limited Regarding Certain Woven Fabrics of Non-textured Nylon Filament Yarns*, Request No. TR-95-051, June 10, 1996; *Report to the Minister of Finance: Requests for Tariff Relief by Lady Americana Sleep Products Inc. and El Ran Furniture Ltd. Regarding Certain Stitch-bonded Warp-knit Fabrics*, Request Nos. TR-95-064 and TR-95-065, February 12, 1997; and *Report to the Minister of Finance: Request for Tariff Relief by Cambridge Industries Regarding Netting*, Request No. TR-98-001, February 12, 1999; and *Report to the Minister of Finance: Requests for Tariff Relief By Helly Hansen Canada Limited Regarding Weft-knit Coated Fabrics*, Request Nos. TR-97-015, TR-97-016 and TR-97-020, March 19, 1999.

With respect to Jones' request for retroactive tariff relief, the Tribunal has stated in previous cases that it will not consider recommending such relief other than in exceptional circumstances. Jones has provided no evidence to justify such a request. The Tribunal, therefore, is not persuaded that the current circumstances are so exceptional as to warrant a recommendation of retroactive relief.

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 rayon/polyester woven fabrics, of Tariff Item Nos. 5408.32.90, 5408.33.90 and 5408.34.90, dyed, printed or made of yarns of different colours, consisting predominantly of rayon filaments, blended solely with polyester filaments, with an average yarn twist of 1,500 or more turns per metre in the warp and the weft, of a weight of 200 g/m² or more but not exceeding 325 g/m², with a value for duty of \$9.00/m² or more, for use in the manufacture of women's jackets, blazers, dresses, skirts, trousers, shorts, culottes and waistcoats.

Anita Szlajak

Anita Szlajak

Presiding Member