

**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
PEERLESS CLOTHING INC.  
REGARDING  
WOVEN FABRICS OF COMBED WOOL AND OF  
COMBED FINE ANIMAL HAIR**

**JULY 28, 2000**

**WOVEN FABRICS OF COMBED WOOL AND OF  
COMBED FINE ANIMAL HAIR**

**REQUEST NO.: TR-99-004**

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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*.<sup>1</sup> The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

On July 7, 1999, pursuant to the Minister's reference, the Tribunal received, a request from Peerless Clothing Inc. (Peerless), of Montréal, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations, from all countries, of certain woven fabrics of combed wool and of combed fine animal hair, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers. Peerless also sought tariff relief retroactive to January 1, 1999.

On September 23, 1999, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,<sup>2</sup> which was distributed to known interested parties. The fabrics under investigation were described in the notice as "woven fabrics, solely of combed wool and of combed fine animal hair, of a weight of 140 g/m<sup>2</sup> or more but not exceeding 300 g/m<sup>2</sup>, of tariff item No. 5112.11.90 or 5112.19.91, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers" (the subject fabrics).

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. A request for information was also sent to potential importers of the subject fabrics. A letter was sent to the Department of National Revenue (Revenue Canada) (now the Canada Customs and Revenue Agency [CCRA]) 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 summarizing the information received from these departments, Peerless, questionnaire respondents and other interested parties was provided to those who had become parties to the proceedings by filing notices of appearance in the investigation. Following distribution of the staff investigation report, Peerless, the Canadian Apparel Manufacturers Institute (CAMI) and the Canadian Textiles Institute (CTI) filed submissions with the Tribunal.

As part of its research activities, the Tribunal's research staff sent further requests for information on production, sales and prices to Peerless and Cleyn & Tinker Inc. (Cleyn & Tinker), a vertically integrated weaver and finisher of fabrics. Tribunal members visited the premises of Peerless and Cleyn & Tinker to view the production process. Reports describing these visits form part of the record.

Pursuant to a request by Peerless, the Tribunal held a public hearing for this investigation on May 3, 4 and 12, 2000.

## PRODUCT INFORMATION

The subject fabrics are used in the manufacture of men's suits, jackets, blazers, vests and trousers. Peerless performs all the cutting, sewing, finishing and quality control of end products at its facility in Montréal.

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

2. C. Gaz. 1999.I.2826.

The fabrics described in the notice of commencement of investigation differ from the fabrics described in the original request filed by Peerless, in that the request contained a reference to a minimum content of fine animal hair of 15 percent. By letter dated July 26, 1999, Revenue Canada advised the Tribunal that it was unable to identify the different fine animal hair fibres in the samples provided by Peerless and to accurately determine the percentage by weight of fine animal hair and wool. Consequently, for any proposed recommendation for tariff relief to the Minister, Revenue Canada recommended against a condition that the fabrics contain a certain percentage of fine animal hair. Accordingly, the Tribunal issued a notice of commencement of investigation that did not refer to a minimum content of fine animal hair and, thus, that covered a much broader range of fabrics than those described in the request.

By letter dated October 26, 1999, Peerless advised the Tribunal that there were two laboratories in Canada and three in the United States that were able to test for content of fine animal hair in wool fabrics.

By letter dated January 6, 2000, the CCRA advised the Tribunal that only one of the five laboratories, namely, Merchandise Testing Laboratories Inc. (MTL), of Brockton, Massachusetts, had the capacity to perform the specific analysis required.<sup>3</sup> The CCRA also revised its earlier position and stated that the text of a proposed tariff item should include a provision that fabrics imported under that tariff item must be “certified by the exporter” as meeting the terms of the tariff item. According to the CCRA, this would eliminate the need to analyse each fabric imported under the new tariff item and allow the CCRA to verify only the fabrics that appear to be questionable.

As of January 1, 2000, the subject fabrics, classified for customs purposes under tariff item No. 5112.11.90 or 5112.19.91 of the schedule to the *Customs Tariff*,<sup>4</sup> are dutiable at 16.0 percent *ad valorem*, but cannot exceed \$4.60/kg under the MFN tariff and are duty free under the U.S. tariff, the Mexico tariff, the Canada-Israel Agreement tariff and the Chile tariff. The MFN tariff will remain at 16.0 percent *ad valorem* until December 31, 2002, and then will be reduced to 15.1 percent *ad valorem* and 14.0 percent *ad valorem* on January 1, 2003, and January 1, 2004, respectively.<sup>5</sup>

## WRITTEN REPRESENTATIONS

### Clothing Industry

#### Requester

Peerless has been manufacturing men’s apparel since 1919. The company is privately owned and employs in excess of 2,000 people. Following the *Canada-United States Free Trade Agreement* (FTA), Peerless established itself as an international manufacturing and marketing company, with a significant presence in the U.S. market. In this respect, Peerless has signed exclusive licence agreements to market

3. The two samples provided by Peerless with its request were analysed by MTL, which confirmed that sample TR-99-004-4B is composed of 73 percent wool and 27 percent mohair. However, MTL determined that sample TR-99-004-4C is composed of 30 percent wool and 70 percent alpaca, whereas Peerless indicated that this fabric contains 15 percent wool and 85 percent alpaca. At the writing of this report, the CCRA was trying to obtain certified standards to be able to determine the accuracy of the methods used by MTL.
4. R.S.C. 1985 (3d Supp.), c. 41.
5. Because the customs duty payable on importations of fabrics under tariff item No. 5112.11.90 or 5112.19.91 cannot exceed \$4.60/kg, the duty payable on the fabrics falling within the scope of this investigation cannot exceed \$0.64/m<sup>2</sup> for fabrics weighing 140 g/m<sup>2</sup> and \$1.38/m<sup>2</sup> for fabrics weighing 300 g/m<sup>2</sup>. Given the weight of the subject fabrics, the actual tariff is typically about \$0.92/m<sup>2</sup> or, on average, 8 percent.

well-known brand names such as Chaps by Ralph Lauren, Ralph by Ralph Lauren and DKNY (Donna Karen New York).

In its request for tariff relief, Peerless claimed that there are no identical or substitutable fabrics available from Canadian textile producers. Peerless alleged that no one in Canada makes woven fabrics of combed wool blended with at least 15 percent fine animal hair, such as cashmere, mohair, alpaca and angora. According to Peerless, these blended fabrics result in better-quality garments that are more luxurious and have greater consumer appeal. Since the special physical characteristics of the subject fabrics distinguish them from domestic fabrics, Peerless stated that price, delivery charges, etc. are not at issue. Peerless submitted that, even if Canadian textile manufacturers were able to produce such fabrics, the price would likely be very high and delivery would be a problem. Moreover, Peerless pointed out that there is some question as to whether Canadian textile producers can supply fabrics in commercially reasonable quantities. Peerless indicated that the men's fashion industry requires fabrics in a wide variety of blends, colours and patterns (or designs) and that, consequently, it must respond to this demand.

Peerless submitted that the removal of the customs duty on imports of the subject fabrics would reduce its costs, allow it to compete more effectively in Canada and in foreign markets, and enable it to increase sales. Peerless indicated that the benefits would be passed on to the consumer. In addition, Peerless stated that tariff relief would offset some of the potential problems associated with the modifications to the duty drawback program.<sup>6</sup> In this connection, Peerless indicated that it no longer gets a drawback for the imported fabrics that it uses for its apparel exported, under TPLs, to the United States and that, as such, the new provisions could seriously damage this export business.

In a letter dated October 25, 1999, Peerless indicated that it met with representatives of Cleyn & Tinker to review its product lines. Peerless claimed that no fabrics identical to the subject fabrics were available and that there were few, if any, samples of fabrics containing fine animal hair blended with wool.<sup>7</sup> Peerless stated that Cleyn & Tinker has not made any effort, whatsoever, to promote fabrics identical to or substitutable for the subject fabrics. According to Peerless, this is explained by the fact that, if Peerless were to be the only customer for such fabrics, it is unlikely that Cleyn & Tinker could make these fabrics in any commercially reasonable manner, i.e. in a broad range of colours and designs. In other words, it would not be economically feasible for Cleyn & Tinker to produce such fabrics.

In its response submission of February 2, 2000, Peerless reiterated that fabrics identical to the subject fabrics are not produced in Canada. Peerless stated that Cleyn & Tinker does not produce identical fabrics in a reasonably available commercial supply. Although Cleyn & Tinker has provided some evidence of a capability to produce fabrics that contain wool and fine animal hair similar to the subject fabrics,

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6. Under the *North American Free Trade Agreement* (NAFTA), a duty refund system called "the lesser-of concept" replaced the drawback regulations for Canada-United States trade. Under this concept, the refund is equal to one of the following amounts, whichever is less: (a) the duties paid on the goods imported into Canada; or (b) the duties paid on the finished goods when exported to the United States. However, NAFTA provides preferential quotas for apparel and textiles that do not meet the rules of origin. These take the form of tariff preference levels (TPLs), formerly known as tariff rate quotas (TRQs) under the FTA. TPLs permit the importation of a fixed quantity of certain "non-originating" goods into Canada, the United States and Mexico at the NAFTA rate of duty. To qualify, manufacturers must have cut (or knitted or shaped) and sewn or otherwise assembled the apparel in Canada. Goods entering a NAFTA country in quantities above the TPLs are subject to the higher MFN rate of duty usually applied to non-NAFTA trading partners. Under NAFTA, however, full duty drawback will continue to apply indefinitely to Canadian apparel exports to the United States that are traded at full MFN rates of duty (i.e. after the TPLs have been fully utilized).

7. According to Peerless, Cleyn & Tinker presented only two samples of fine animal hair fabrics, in prototype form.

Peerless stated that they are not exactly identical in a physical sense and, more importantly, are not available in reasonable commercial quantities. In this connection, Peerless pointed out that 13 of the 34 samples of fabrics submitted by Cleyn & Tinker are not identical to the subject fabrics because they do not contain fine animal hair. With respect to the other samples that contain fine animal hair, Peerless indicated that they are very limited in design, colour, quantity and quality. According to Peerless, this makes them commercially unacceptable and, therefore, not identical. Peerless stated that, in any given year, it is presented with thousands of samples of the subject fabrics from each of the many textile mills that produce these fabrics. Peerless submitted that this allows it to offer garments made from unique and exclusive fabrics that are different from those offered by competitors.

Peerless also stated that there is no evidence on the record that the fine animal hair blends produced by Cleyn & Tinker are sold to men's apparel manufacturers in Canada as opposed to women's apparel manufacturers. Peerless indicated that it cannot purchase these fabrics because they do not meet the demands of the men's apparel market, which is the market in which Peerless competes. On this point, Peerless stated that men now want to buy apparel that can be worn year-round. Therefore, mid-weight fabrics containing higher quality wool must be used so that the wool/fine animal hair blends, i.e. the subject fabrics, can provide a finer-quality feel and look.

Peerless claimed that there is limited market acceptance of the wool/fine animal hair fabrics produced by Cleyn & Tinker. Peerless indicated that the market for the subject fabrics in Canada more than doubled between 1998 and 1999 and that, had Cleyn & Tinker been able to make these fabrics in any commercial way, it would have increased its styles and volumes and shared in the market growth.

Peerless indicated that it would prefer to buy wool/fine animal hair fabrics from a North American source, but that Cleyn & Tinker has not tried to sell it these fabrics. According to Peerless, this is because certain wool/fine animal hair fabrics produced by Cleyn & Tinker are exclusive to other apparel manufacturers, and it is not commercially feasible for Cleyn & Tinker to make fabrics truly identical to the subject fabrics for the purpose of selling them to Peerless. Peerless submitted that the foregoing establishes that the wool/fine animal hair blends produced by Cleyn & Tinker are not identical in a commercial sense. Moreover, Peerless stated that this is also evidenced by the price difference between certain wool/fine animal hair blends produced by Cleyn & Tinker and the subject fabrics and by the fact that Cleyn & Tinker does not supply the Canadian market for the subject fabrics.

Peerless stated that some of the samples of wool/fine animal hair fabrics provided by Cleyn & Tinker have not been produced since March 1998 and, therefore, are not identical in any commercial manner to the subject fabrics. Peerless stated that this is further evidence that the men's apparel market does not consider these fabrics to be identical to the subject fabrics.

Peerless also submitted that fabrics substitutable for the subject fabrics are not produced in Canada. Peerless indicated that substitutability depends on several factors, including the technical nature and quality of the fabrics, price and market acceptance considerations, as well as the availability of supply. Peerless pointed out that the Tribunal has recognized in the past that fabrics destined for the fashion industry have a lower degree of substitutability, given that the fashion industry attaches considerable importance to even small differences between fabrics, which allow it to offer distinctive new products.

Peerless stated that, in the more fashion-conscious mid-price segment of the market where it operates, merchandise buyers demand apparel made from the subject fabrics and place considerable importance on the uniqueness of the quality, design, colour and hand of the fabrics. In this context, Peerless stated that the fabrics produced by Cleyn & Tinker are not substitutable for the subject fabrics because they

do not have the physical characteristics, such as content of fine animal hair, or the necessary quality, variety of design, colour, hand or feel demanded by the fashion industry. Furthermore, Peerless indicated that the evidence, i.e. Cleyn & Tinker's very small production and sales of wool/fine animal hair blends, as well as its lack of aggressiveness to approach Peerless, shows that Cleyn & Tinker does not supply the Canadian men's apparel industry in any serious commercial manner.

Peerless indicated that Cleyn & Tinker is a capable producer of 100 percent wool and wool/polyester fabrics. In this connection, Peerless stated that it has purchased a significant volume (150,000 m<sup>2</sup>, worth over \$1 million) of 100 percent wool fabrics from Cleyn & Tinker for the fall 2000 season. Peerless pointed out that this purchase did not displace any purchases of the subject fabrics and that it is evidence that 100 percent wool fabrics are not substitutable for the subject fabrics. Peerless also stated that this is further evidence that tariff relief on the subject fabrics will not affect Cleyn & Tinker's sales of 100 percent wool fabrics or wool/non-fine animal hair blends.

Peerless stated that tariff relief is now clearly warranted because there has been no change in the supply of fabrics from Canadian textile producers since the Tribunal's recommendation in February 1998. Furthermore, Peerless indicated that there is no evidence that Cleyn & Tinker has used its technical capabilities since that time to supply or even try to supply Peerless or other Canadian apparel manufacturers with a fabric similar to the subject fabrics. In this connection, Peerless pointed out that Cleyn & Tinker has continued to produce the same wool/fine animal hair fabrics as it did two years ago and that it has not made any changes to its wool/fine animal hair product line in the last two years in response to fashion trends. According to Peerless, this product line has been the same for at least eight fashion seasons.

Peerless submitted that tariff relief should be granted because the Canadian textile industry is unable to supply Canadian apparel manufacturers with identical or substitutable fabrics and that such relief will not cause prejudice to Canadian textile producers. Peerless stated that the subject fabrics will not displace fabrics produced by the Canadian industry. In addition, Peerless indicated that the hundreds of textile mills in the world that make the subject fabrics each specialize in only a certain range of the subject fabrics due to cost realities. In this context, Peerless stated that it is not credible to think that Cleyn & Tinker could supply the needs of Canadian men's apparel manufacturers because the investment in yarns, dyes and designs would be prohibitive.

Peerless stated that the definition of the subject fabrics used by the Tribunal in this investigation includes all blends of worsted wool and fine animal hair, regardless of the percentage content of fine animal hair. Peerless pointed out that it now imports a range of fine animal hair blends, containing from 5 percent to 25 percent and more fine animal hair,<sup>8</sup> whereas Cleyn & Tinker produces blends of wool and fine animal hair containing from 10 to 25 percent fine animal hair. Therefore, Peerless stated that Cleyn & Tinker does not service the market for blended fabrics containing less than 10 percent fine animal hair.

Affiliated Trading Canada Ltd. (Affiliated)

Affiliated, of Ville Saint-Laurent, Quebec, an importer and agent that provides fabrics to the Canadian clothing industry, stated that, in recent years, there has been an increasing demand for luxury fabrics such as the subject fabrics. It indicated that it works closely with mills located in Italy, South America, India, the Republic of Korea and the People's Republic of China to develop these fabrics. Affiliated pointed out that each mill attempts to specialize in a certain range of fabrics, since it is neither feasible nor economically viable for a mill to develop a full range of wool/fine animal hair blends. Affiliated

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8. During the investigation, Peerless submitted over 30 samples of the subject fabrics.

submitted that the hand and appearance of the subject fabrics are quite superior to those of fabrics made from medium-grade 100 percent wool or to those of wool/synthetic blends, even when the content of fine animal hair is relatively small.

#### American Pant International (American Pant)

In response to the Tribunal's questionnaire, American Pant, of Toronto, Ontario, a manufacturer of men's trousers, supported Peerless's request for tariff relief. Ninety-five percent of the company's production is exported to the United States, and over one third of these exports are trousers made from fabrics of wool and wool blends, including fine animal hair. American Pant indicated that it is increasingly producing higher-quality trousers and that, because its TPLs are very small, tariff relief would be beneficial.

#### Ari Freed

Ari Freed, of Windsor, Ontario, a large retailer of men's apparel since 1929, supported Peerless's request for tariff relief and appeared as a witness for Peerless at the hearing. Ari Freed stated that fashion trends have moved to lighter fabrics and year-round wear and that, therefore, the demand for clothing made from the subject fabrics has increased. Ari Freed indicated that garments made from the subject fabrics have a better hand, as well as a certain cachet in the market, that consumers want. Ari Freed submitted that, because of domestic and foreign competition, it must be able to obtain apparel made from the subject fabrics at competitive prices.

#### Ballin Inc. (Ballin)

In a letter dated October 19, 1999, Ballin, of Montréal, a manufacturer of men's trousers and shorts, as well as women's sportswear, supported Peerless's request for tariff relief because identical or substitutable fabrics are not available from domestic textile manufacturers. Ballin submitted that tariff relief would allow it to respond to changing market trends and consumer demands which, in turn, would enable it to maintain market share and its competitive edge in the Canadian and expanding foreign markets. Ballin indicated that the removal of the customs duty on imports of the subject fabrics would lower costs, which would help it to maintain price points and margins. Ballin also stated that benefits would be passed on to the consumer.

#### CAMI

CAMI supported Peerless's request for tariff relief because no substitutable fabrics are available in reasonable commercial quantities and offered or supplied to Peerless at acceptable prices.

In essence, CAMI submitted that Cleyn & Tinker has little, if any, supplier presence in the market niche in which Peerless is operating and that it should, therefore, not suffer any economic impact should tariff relief be granted. CAMI submitted that the net economic benefits favour Peerless in the context of tariff relief. CAMI stated that, although Cleyn & Tinker indicated that its production volumes have increased, wool/fine animal hair fabrics are a very small portion of Cleyn & Tinker's overall production. CAMI submitted that, based on the evidence, it is unclear whether Cleyn & Tinker has the technical capabilities to produce the specific high-quality fabrics containing wool and fine animal hair and to do so in the variety of colours, patterns and combinations required. CAMI indicated that the fabric samples (wool/fine animal hair blends) provided by Cleyn & Tinker are nothing more than an expression of the company's capabilities and potential business opportunities. CAMI stated that, beyond these samples, there is little in the way of hard evidence of any plans to actively engage in commercial production of these



fabrics. CAMI submitted that, since Peerless's last request, Cleyn & Tinker has not made any effort to promote the development and sale of identical or substitutable fabrics to Peerless. Moreover, CAMI submitted that Cleyn & Tinker does not seem to have any production or marketing plans to deliver similar fabrics in the commercial quantities needed by Peerless in the near future.

S. Cohen Inc. (Cohen)

Cohen, of Ville Saint-Laurent, a manufacturer of men's apparel since 1923, also supported Peerless's request for tariff relief. Cohen stated that there is a growing demand for apparel made from the subject fabrics and that identical or substitutable fabrics are not available in Canada. According to Cohen, the removal of duties on importations of the subject fabrics would allow manufacturers to reduce costs and remain competitive. Cohen indicated that tariff relief on the subject fabrics would not affect its purchases from Cleyn & Tinker of 100 percent wool fabrics and wool/polyester blends.

The Copley Apparel Group Ltd. (Copley)

Copley, of Hamilton, Ontario, a manufacturer of high-end men's apparel that employs 550 people, supported Peerless's request for tariff relief and appeared as a witness for Peerless at the hearing. Copley indicated that the demand for the subject fabrics has increased over the last couple of years. Copley stated that identical or substitutable fabrics are not available from Canadian textile producers. Copley pointed out that, in the past few years, it has purchased the subject fabrics from approximately 30 European mills, which typically focus on high-quality luxury-blend fabrics, in designs and colourways that make them unique in the world market. In this connection, Copley stated that these mills also provide exclusivity of fabrics in quantities as low as 50 square metres.

Copley submitted that apparel made from the subject fabrics does not compete with apparel made from 100 percent wool because wool/fine animal hair blends have a different hand. According to Copley, specialty retailers want garments that set them apart from their competition.

Copley stated that Cleyn & Tinker is a large production-driven mill with long runs and a narrow focus. Copley indicated that, although Cleyn & Tinker has produced, in the past, some fabrics similar to the subject fabrics, it cannot supply the variety of fabrics that Copley needs in small quantities.

Delfino's Men's Wear (Delfino)

Delfino, of Ottawa, Ontario, a retailer of fine men's clothing for over 44 years, stated that the demand for casual wear has increased, but that consumers are seeking suits made from the subject fabrics, since they are in the mid-weight range and can be worn year-round. In addition, Delfino indicated that suits made from the subject fabrics are distinct from suits made from 100 percent wool, in that they have a different hand.

Golden Brand Clothing (Canada) Ltd. (Golden Brand)

Golden Brand, of Montréal, a manufacturer of men's apparel, supported Peerless's request for tariff relief. Golden Brand stated that there is a growing demand for clothing made from wool/fine animal hair blends and that, therefore, it has begun to produce suits made from the subject fabrics. Golden Brand indicated that identical or substitutable fabrics are not available in Canada. According to Golden Brand, the removal of duties on importations of the subject fabrics would allow it to reduce costs and remain competitive. In addition, Golden Brand stated that tariff relief will not affect its purchases, from Cleyn &

Tinker, of fabrics made from 100 percent wool or made from wool and polyester, because apparel made from these fabrics are not substitutable for clothing made from the subject fabrics.

Harry Rosen Inc. (Harry Rosen)

Harry Rosen, of Toronto, a retailer of fine men's clothing since 1954, also supported Peerless's request for tariff relief and appeared as a witness for Peerless at the hearing. Harry Rosen stated that, in the last two or three years, the demand for apparel made from the subject fabrics has increased. In this connection, Harry Rosen submitted that, because of the move towards less formal wear in the workplace, year-round fabrics that have a luxurious feel and that perform well are more in demand. Harry Rosen added that, where a suit made from the subject fabrics is priced at the same level as a suit made from 100 percent wool, the customer will often prefer the former.

Jack Victor Limited (Jack Victor)

Jack Victor, of Montréal, a manufacturer of fine men's clothing, stated that apparel made from the subject fabrics has become an increasingly important part of its business. It indicated that higher-end retail stores are demanding garments made from more sophisticated blended fabrics in unique patterns and designs, including fabrics with very fine yarn counts (super 100s, super 110s, super 120s and higher). Jack Victor stated that, more often than not, these blended fabrics contain cashmere, mohair, camel hair or alpaca, as well as very fine grades of merino wool. According to Jack Victor, these fabrics are generally sourced from mills located in northern Italy, and identical or substitutable fabrics are not available in Canada.

Jo/Ri Inc. (Jo/Ri)

In response to the Tribunal's questionnaire, Jo/Ri, of Montréal, an importer and distributor of the subject fabrics, supported Peerless's request for tariff relief. Jo/Ri indicated that highly specialized textile mills produce these fabrics and that it is unlikely that Canadian textile manufacturers are familiar with the processing of these fabrics, nor would they be willing to commit a sufficient amount of time in the development of identical or substitutable fabrics. Although trial production runs are possible, Jo/Ri stated that, because of the large variety of fabrics that is required and the cost involved, it is questionable whether domestic mills could produce the desired fabrics in commercially reasonable quantities.

Jo/Ri submitted that the removal of the customs duty on imports of the subject fabrics would not be detrimental to Canadian mills, would lower costs and would be beneficial to the consumer.

Samuelsohn Limited (Samuelsohn)

Samuelsohn, of Montréal, a manufacturer of men's quality tailored clothing since 1923, supported Peerless's request for tariff relief and appeared as a witness for Peerless at the hearing. Samuelsohn submitted that the demand for the subject fabrics is increasing and that identical or substitutable fabrics are not available from Canadian textile mills. Samuelsohn indicated that it purchases the subject fabrics from many different mills worldwide, as each mill specializes in and produces a very limited range of the subject fabrics. Samuelsohn stated that a single mill, such as Cleyn & Tinker, could not possibly produce the range of fabrics, with the varying types and percentages of wool/fine animal hair blends, in the designs and colours that are required.

### Weston Apparel Manufacturing Company (Weston)

In response to the Tribunal's questionnaire, Weston, of Toronto, a manufacturer of suits, jackets and trousers, also supported Peerless's request for tariff relief. Weston stated that there are no domestic producers of fabrics of combed wool blended with at least 15 percent fine animal hair, such as cashmere, mohair, alpaca and angora. It submitted that the subject fabrics are superior in quality and sophistication. Weston indicated that, although it has not imported the subject fabrics due to their high prices, it intends to do so, since customers are showing an interest in these types of fabrics. It added that, in general, fabrics are becoming more sophisticated and that wool/fine animal hair fabrics are now in fashion.

Weston pointed out that it currently purchases 100 percent wool fabrics and wool/polyester blends from Cleyn & Tinker. Weston stated that, should tariff relief be granted, it would continue to purchase these fabrics from Cleyn & Tinker, provided quality and price are competitive.<sup>9</sup>

### **Textile Industry**

#### Cleyn & Tinker

Cleyn & Tinker, of Huntingdon, Quebec, was founded in 1930 and produces fabrics made from: (1) 100 percent worsted (combed) wool; (2) worsted wool combined with fine animal hair, such as mohair, cashmere and baby alpaca; (3) worsted wool combined with other natural fibres, such as silk and linen; (4) worsted wool combined with man-made fibres; and (5) blends of polyester, viscose, silk and linen. The company has an overall capacity of 7 million linear metres and employs 650 people. It has made significant investments in the latest equipment for spinning, weaving, dyeing, and wet and dry finishing. Cleyn & Tinker has sales offices in Montréal, Toronto and New York, as well as sales agents in Mexico, Hong Kong and the United Kingdom. It sells mainly to manufacturers of men's suits, jackets, blazers, vests and trousers, and approximately 45 percent of its production is exported, mostly to the United States.

Cleyn & Tinker opposed Peerless's request because, should tariff relief be granted, it would have a major negative impact on its production and sales of competing fabrics currently sold to Canadian manufacturers of men's suits, jackets, blazers and trousers.

Cleyn & Tinker claimed that a broad variety of identical or substitutable fabrics is readily available from Canadian textile producers and is currently being sold in substantial volumes to manufacturers of men's clothing. In this connection, Cleyn & Tinker stated that it produces worsted wool fabrics that contain mohair, cashmere, baby alpaca and other fine animal hair,<sup>10</sup> as well as 100 percent wool fabrics and other blends, in varying weights (160 g/m<sup>2</sup> to 275 g/m<sup>2</sup>), fibre content, constructions and finishes. According to Cleyn & Tinker, these fabrics<sup>11</sup> have the same appearance and feel as the subject fabrics and compete directly with the fabrics for which Peerless is seeking duty-free entry. Cleyn & Tinker indicated that its total production of these substitutable fabrics is over 5.6 million square metres per year and that it produces over 175,000 different and unique designs per year. Cleyn & Tinker also stated that it has several additional fabrics, in the development or sampling stage, which are identical or similar to the subject fabrics and that it has the capacity to manufacture other fabrics of this type to meet the preferences and the present and future needs of its customers.

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9. Letter dated November 17, 1999.

10. Cleyn & Tinker indicated that it imports fine animal hair yarn from Italy and that it also produces such yarn with fibres sourced directly from grower countries such as China, Mongolia and Peru.

11. Cleyn & Tinker provided 34 samples to the Tribunal, as well as range cards for fabric No. 29767 (80 percent wool and 20 percent cashmere) showing 5 different patterns and 45 colourways.

Cleyn & Tinker pointed out that Peerless provided only two samples of worsted fabrics for laboratory analysis, whereas the description of the subject fabrics contained in the Tribunal's notice of commencement of investigation covers a much broader range of fabrics. Cleyn & Tinker submitted that almost all the fabrics that it produces fall within the scope of the investigation. Cleyn & Tinker stated that it was clearly established in Request No. TR-96-005<sup>12</sup> that Cleyn & Tinker is both dynamic and responsive to the marketplace and that it has the technical capabilities to produce, and was producing, substitutable fabrics for the men's wear trade. According to Cleyn & Tinker, the only change in circumstances between then (1998) and now is the fact that its product range of the substitutable fabrics has expanded significantly and that the negative consequences of removing the duties on the subject fabrics would be even greater now than it was at the time of the previous investigation. Cleyn & Tinker also pointed out that Peerless still only buys a limited volume of its fabrics, even though it is the second largest worsted fabric mill in North America and one of the largest in the world, with an excellent reputation for quality and versatility.

Cleyn & Tinker stated that many of its 100 percent wool fabrics and wool/fine animal hair blends compete directly with the subject fabrics as far as weight, hand, construction and end use are concerned. It also indicated that, where fine animal hair is present in low percentages, the competition between wool/fine animal hair blends and 100 percent wool fabrics is head-on. In addition, Cleyn & Tinker indicated that it sells fabrics to other manufacturers of men's clothing that compete directly with Peerless. According to Cleyn & Tinker, customer accounts can be lost or gained on the basis of a few cents per square metre.

Cleyn & Tinker stated that, in the normal course of its business, it changes over one third of its product line every year in response to changing fashion trends and that it works with its customers to develop products that are new, interesting, fashionable and competitive. In this regard, Cleyn & Tinker indicated that it has made substantial investments in flexible manufacturing equipment and processes in order to produce the finest quality fabrics at competitive prices and to incorporate an assortment of fibres in its products. Cleyn & Tinker submitted that it is well positioned to service the needs of its customers and that it has the existing capacity to meet all reasonable requirements of Canadian manufacturers of men's apparel made from wool/fine animal hair blends.

Cleyn & Tinker submitted that, should tariff relief be granted, customers would either pressure it to match the lower prices or switch their purchases to the subject fabrics. Cleyn & Tinker stated that this, in turn, would place it in an untenable position with respect to margins and profits and would undermine its ability to maintain production of the competing fabrics.

Cleyn & Tinker argued that Peerless has an edge in the U.S. market vis-à-vis U.S. manufacturers of apparel because the Canadian MFN tariff (16 percent) on wool fabrics imported from non-NAFTA countries is significantly lower than the U.S. tariff (about 36 percent). Cleyn & Tinker pointed out that Peerless also benefits from NAFTA rates of duty under TPLs, whereas suits originating in non-NAFTA countries and imported into the United States are subject to MFN rates of duty. Moreover, it stated that Peerless continues to be entitled to full duty drawback on non-NAFTA inputs used in apparel exported at MFN rates of duty.

Finally, Cleyn & Tinker indicated that the description in the Tribunal's notice of commencement of investigation would allow duty-free entry of worsted wool fabrics, regardless of the amount of fine animal hair (i.e. 95, 15, or 1 percent) that they may contain. Cleyn & Tinker submitted that tariff relief on the

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12. *Report to the Minister of Finance: Request for Tariff Relief by Peerless Clothing Inc. Regarding Certain Woven Fabrics of Virgin Wool and Fine Animal Hair* (20 February 1998) (CITT).

subject fabrics would immediately put its production of men's wear fabrics at risk and have a negative impact on its sales in the U.S. market, where Cleyn & Tinker's U.S customers compete with Peerless.

### CTI

The CTI, in support of Cleyn & Tinker, opposed Peerless's request. The CTI pointed out that the request filed by Peerless is the same as in Request No. TR-96-005 regarding worsted fabrics and that it provided no evidence that circumstances had changed since the previous request. The CTI noted that the only difference is in the minimum content of fine animal hair. In this connection, it pointed out that, in Request No. TR-96-005, the threshold was 10 percent, whereas, in the present case, it is 15 percent.

The CTI indicated that the CCRA increased the threat to the domestic industry by proposing a description with no minimum percentage content of fine animal hair, even though the hair content is the factor that allegedly distinguishes the subject fabrics from the large universe of 100 percent wool fabrics made in Canada. On this point, the CTI submitted that Peerless produced no evidence of and made no request for fabrics covered by this broadened definition. The CTI alleged that it would have been appropriate to reject the present request on the grounds that there has been no change of circumstances since the Tribunal's recommendation that the tariff remain unchanged and that the CCRA's definition, if accepted, would expand the tariff relief request into areas extensively overlapping actual Canadian production.

The CTI alleged that fabrics made from wool and fine animal hair are produced in Canada and offered in volumes and diversity which have increased since the previous request. The CTI submitted that the industry also produces very large quantities of 100 percent wool fabrics which would be severely affected by the tariff elimination on imports of the subject fabrics.

The CTI pointed out that the CCRA is not capable of determining the percentage of fine animal hair in any wool/hair fabric. It indicated that, under the *Harmonized Commodity Description and Coding System*, no distinction is made in any of the headings and subheadings pertaining to textiles between wool and fine animal hair because these fibres are similar in properties, processing and end uses. Moreover, The CTI pointed out that the relative weight of one or the other cannot be measured accurately in a blended fabric. Since the CCRA cannot distinguish between the relevant fibres and the notice of commencement of investigation did not specify a minimum content of fine animal hair, the CTI submitted that the scope of the investigation includes animal hair contents as low as 0.1 percent and wool contents as high as 99.9 percent.

The CTI stated that Cleyn & Tinker produces worsted fabrics, including wool/hair blends, that are identical to the subject fabrics, as well as 100 percent worsted wool fabrics that compete directly with the subject fabrics in the marketplace. The CTI also indicated that the evidence on file shows that the domestic production of fine animal hair blends is developing vigorously. The CTI pointed out that Peerless, once a large user of Canadian fabrics made by Cleyn & Tinker and others, for the most part, shunned domestic producers throughout the 1990s.

The CTI submitted that Peerless and the other domestic apparel manufacturers are currently paying less than half the customs duties imposed by the U.S. authorities on their competitors in the United States. The CTI submitted that an importer pays no additional duties when it moves from imported 100 percent wool fabrics to the subject fabrics. However, the CTI stated that, should tariff relief be granted, the importer would have a new and significant economic incentive to switch from domestic 100 percent wool fabrics to imported, duty-free wool/fine animal hair blends.

The CTI stated that the Tribunal cannot ignore the terms and conditions of NAFTA. Since most of Peerless's production is based on imported (non-NAFTA) fabrics, the CTI submitted that the clothing that Peerless exports to the United States does not meet the NAFTA rules of origin and that, therefore, Peerless must utilize TPLs or pay regular MFN rates of duty. The CTI pointed out that the applicable wool apparel TPL has been fully utilized on an annual basis and that Peerless is generally believed to be the principal beneficiary. The CTI stated that, should Peerless expand its U.S. business using the subject fabrics, the non-NAFTA-originating apparel made from them will most likely attract U.S. MFN rates of duty. The CTI indicated that, if MFN duties are paid on the exported apparel, the tariff relief requested is irrelevant, since Peerless would be entitled to full duty drawback on its imported fabric inputs.

The CTI submitted that Peerless is already the beneficiary of many special measures under NAFTA and the textile reference and that the numerous requests for tariff relief made by Peerless entail new risks for domestic textile producers and costs for everyone concerned. In this case, the CTI submitted that, once again, Peerless ignores the availability not only of identical or substitutable fabrics produced in Canada but also of fabrics produced in the United States, which are duty free.

In the CTI's view, Peerless should be required to disclose the total amount of customs duty that it pays (net after all forms of tariff relief), as this would place the Tribunal in a better position to assess the appropriateness of further requests for tariff relief.

The CTI submitted that the evidence on the record indicates that there is substitutability and competition between 100 percent wool fabrics and wool/fine animal hair blends and that the duty cost of the subject fabrics is very small as a result of the low Canadian MFN tariff. The CTI also submitted that the consumer, the retailer and the user of wool/fine animal hair fabrics cannot detect the presence of fine animal hair in such blends and that none of the laboratories canvassed in Canada and the United States can determine the composition precisely.

#### Cashmere & Camel Hair Manufacturers Institute (CCMI)

The CCMI is an international trade association located in the United States, which represents the interests of processors and manufacturers of cashmere and camel hair fibres, yarns and fabrics. The CCMI appeared as a witness for Cleyne & Tinker at the hearing. The CCMI stated that, because of the poor enforcement of textile labelling laws in many countries, garments are frequently mislabelled as to the percentage content of cashmere in order to unfairly compete with legitimately labelled wool or cashmere products. The CCMI also stated that it has dealt with several cases involving the misidentification of cashmere in garments which are made in Canada and sold to U.S. retailers. According to the CCMI, one of these involved a woven wool blend fabric made in Europe which was used in Canada by Peerless to manufacture men's clothing exported to the United States.

The CCMI indicated that, in cases where garments contain a small percentage of fine animal hair, it is virtually impossible for an ordinary consumer to detect whether cashmere is present. The CCMI submitted that cashmere fabrics and wool/cashmere blends should be treated as wool fabrics because they compete with wool fabrics. The CCMI submitted that there is adequate production capacity in Canada, the United States and Mexico to supply the needs of the NAFTA market for all types of woollen and worsted fabrics, including those blended with cashmere in any percentage.

Warren Corporation (Warren)

Warren, of Stafford, Connecticut, a U.S. manufacturer of fine woollen and worsted fabrics, appeared as a witness for Cleyn & Tinker at the hearing. Warren stated that it does not agree with the perception that the introduction of minor proportions of fine animal hair with wool creates a worsted fabric that is materially different from a 100 percent wool worsted fabric. According to Warren, customers and consumers cannot perceive any differences between those fabrics in terms of appearance, hand or durability of garments. Warren indicated that, depending on the fineness of the wool and the finish used, it is possible to produce 100 percent wool worsted fabrics that are superior to fabrics of coarser wool and minor proportions of cashmere. Warren stated that it does not detect any strong or growing demand for wool/fine animal hair blends in the United States and that these fabrics actually represent less than 5 percent of its sales.

Warren also indicated that there are no reliable means of determining the exact percentage of fine animal hair in wool/hair blend fabrics and that analyses of animal hair content in such fabrics are subject to substantial error.

West Coast Woollen Mills (West Coast)

In response to the Tribunal's questionnaire, West Coast, of Vancouver, British Columbia, a producer of fabrics made from 100 percent wool, opposed the request for tariff relief. West Coast claimed that it produces substitutable fabrics and that it has the capability to produce fabrics made from combed wool and fine animal hair, such as cashmere. In this connection, West Coast stated that it is currently sampling a wool/cashmere yarn from Germany.

West Coast indicated that the actual duty paid on the subject fabrics represents approximately 5 percent of their value, hardly a prohibitive amount. It submitted that Peerless already holds a dominant position in the North American market and that tariff relief would not result in an increase in market share for that company, but rather an increase in profits.

**OTHER INFORMATION**

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada maintains quota restraints on combed wool and fine animal hair woven fabric, including any woven fabric mixed mainly or solely with wool and fine animal hair (sub-category 31.1), imported from Bulgaria (1988), China (1979), the Czech Republic (1982), Korea (1978), Taiwan (1979) and Uruguay (1982). Accordingly, this coverage includes the subject fabrics of tariff item No. 5112.11.90 or 5112.19.91. Bilateral agreements, which provide for these restrictions, exist between the Government of Canada and these foreign governments as indicated above.

DFAIT also indicated that it would consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove the customs duties on the basis of non-availability. Ex-quota treatment will only be granted in cases where it can be demonstrated that there is an extra charge for using products under quota or where goods are not otherwise available in Canada.

The CCRA indicated that there would be additional costs over and above those incurred by it (e.g. the cost of analysing fabrics imported under a new tariff item) to administer the tariff relief, should it be granted.

## PUBLIC HEARING

As noted earlier, the Tribunal held a public hearing to obtain further evidence and hear arguments in respect of three specific issues. These were:

- the substitutability of fabrics made by Cleyn & Tinker or any other domestic producer for the subject fabrics (in terms of commercial availability and market acceptance of fabrics);
- Cleyn & Tinker's ability to produce fabrics identical to or substitutable for the subject fabrics and in quantities needed by Peerless; and
- the impact on the prices for the allegedly identical and substitutable fabrics produced by Cleyn & Tinker or any other domestic producer, should tariff relief be granted on the subject fabrics.

The Tribunal also invited parties to come to an understanding under which tariff relief could be granted. In this regard, Peerless submitted that, if the Tribunal were not to recommend tariff relief as requested, the best viable alternative would be to specify a minimum content of 5 percent fine animal hair for the subject fabrics. Peerless argued against imposing a price point for the subject fabrics due to problems associated with fluctuations in the cost of fine animal hair and exchange rates. Should the Tribunal find this proposal unacceptable, Peerless proposed a second alternative. Under this scenario, tariff relief would be granted for wool/fine animal hair blends, with the wool fibre measuring on average 17.5 microns or less, for use in the manufacture of men's suits, suit-type jackets, blazers, vests and trousers. As for sports jackets, Peerless proposed a minimum content of 10 percent fine animal hair for the wool/fine animal hair blends, with no restriction as to the diameter of the wool fibre.

In response to the alternatives proposed by Peerless, Cleyn & Tinker argued that, should the Tribunal recommend tariff relief, it should be confined to fabrics for use in the production of suits only because Cleyn & Tinker produces all kinds of blends for sports jackets. Moreover, Cleyn & Tinker submitted that limitations should be imposed on the fabrics, namely, a minimum content of 7 percent fine animal hair, an average wool fibre diameter of 17.5 microns or less and a worsted count of 100.<sup>13</sup>

Peerless accepted the minimum content of 7 percent fine animal hair, but proposed a worsted count of 90.<sup>14</sup> With respect to the issue of limiting the tariff relief to suit fabrics, Peerless argued that the facts do not support such a recommendation. If the Tribunal were to limit its recommendation for tariff relief to suit fabrics, Peerless argued that the tariff relief should be retroactive.

### Peerless

Peerless argued that, although the subject fabrics may not be a very large part of the men's fine tailored clothing industry, they are an important part. Peerless argued that the evidence on the record establishes that the market for the subject fabrics has grown and that garments made from these fabrics are in demand. Peerless submitted that, in order to respond to the needs of the fashion industry, such fabrics must be available in a variety of designs and colours. Peerless argued that, if Canadian manufacturers of suits and jackets cannot meet this demand, they will not be fully competitive in the market and, consequently, will lose sales to foreign competitors.

Peerless argued that the proper test to apply in this case is to determine whether the domestic textile industry has the ability to produce identical or substitutable fabrics in the commercial quantities that are

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13. These would be 2-ply yarns.

14. *Ibid.*



required by Canadian apparel manufacturers. Although Cleyn & Tinker has the technical ability to produce similar or substitutable fabrics, Peerless argued that Cleyn & Tinker neither produces nor markets these fabrics in any serious manner. Peerless argued that fashion drives the market and that, as such, minor differences in the composition of the fabrics, as well as the need for a variety of fabrics, make a big difference in the fashion business.

On the issue of whether one can distinguish between a 100 percent wool fabric and a wool/fine animal hair blend, Peerless argued that there is a difference in feel between the two fabrics when the same wool is used in both fabrics and some animal hair, e.g. 5 percent cashmere, is used in the blended fabric. Moreover, Peerless argued that there is no direct competition between these two fabrics because retailers command a premium for apparel made from fine animal hair. Peerless submitted that there is a certain cachet and marketing advantage to using wool/fine animal hair blends.

Peerless argued that, based on the evidence, it is clear that testing for the percentage of fine animal hair in blended fabrics can be done.

Peerless submitted that Canadian apparel manufacturers have no aversion to buying from Cleyn & Tinker. In this connection, Peerless indicated that Canadian manufacturers purchase large amounts of 100 percent wool fabrics and wool/polyester blends. For example, Peerless pointed out that it purchased 1.2 million square metres of fabric from NAFTA mills. Peerless argued that, because of the TPL situation, there is an incentive of \$4/m<sup>2</sup> to purchase identical fabrics from NAFTA mills.

Peerless argued that the prices for the subject fabrics are higher than the average price of Cleyn & Tinker's fabrics by more than \$1/m<sup>2</sup>, a significant difference. Peerless argued that, if identical or substitutable fabrics were available from Canadian production at comparable prices, Canadian men's apparel manufacturers would buy these fabrics from Cleyn & Tinker in light of the TPL situation.

With respect to market acceptability, Peerless argued that Cleyn & Tinker only produces a few styles of the allegedly identical or substitutable fabrics and that very few are actually sold in Canada. Moreover, Peerless argued that these fabrics have been produced for some time, thereby indicating that there has been no change in patterns or designs as required by the fashion industry.

Peerless argued that the evidence establishes that Cleyn & Tinker is unable to meet the demand of Canadian men's apparel manufacturers for wool/fine animal hair fabrics. In this connection, Peerless argued that there are hundreds of mills around the world that offer a plethora of the subject fabrics in patterns, designs and colours that Cleyn & Tinker cannot hope to duplicate. Moreover, Peerless argued that Cleyn & Tinker's focus is on the production of fabrics made from 100 percent wool and wool/polyester blends and that Cleyn & Tinker did not get involved with wool of 17.5 microns or less, nor does it intend to do so.

Should tariff relief be granted, Peerless submitted that the benefits to the Canadian men's apparel industry would far outweigh any injury that may occur to Cleyn & Tinker, since the production of fine animal hair blends in Canada is minuscule at best. Peerless also argued that suits made from 100 percent wool still represent a major portion of the market and that sales remain strong. If the Tribunal accepts that there is some detrimental competition between suits made from 100 percent wool and suits made from fine animal hair blends, Peerless submitted that there is no such evidence in the sports jacket market. In addition, Peerless argued that, even with what is, in essence, a \$1/m<sup>2</sup> reduction in duties, there would be nothing to prevent Cleyn & Tinker from getting into the production of fine animal hair blends in a serious manner because of the advantages of being a NAFTA mill.

With respect to the labelling of clothing, Peerless argued that there is no widespread fraud, as seems to have been alleged. Peerless argued that, in any event, it is possible to test the fabrics and to include a requirement that the exporter certify the fabrics as to their characteristics.

Peerless argued that Canadian manufacturers of men's clothing are under constant pressure to hold prices or reduce them and that an 8 percent saving, i.e. a \$1/m<sup>2</sup> saving, will enable manufacturers to become more competitive and create jobs.

### **Cleyn & Tinker**

Cleyn & Tinker argued that Peerless projects to increase its market for suits made from wool/fine animal hair tenfold in less than three years. In this connection, Cleyn & Tinker submitted that it is difficult to argue that there is no competition between these suits and 100 percent wool suits when Peerless's production of the latter has decreased.

Cleyn & Tinker argued that no single mill can produce fabrics in as wide a range of colours and styles as those produced in the rest of the world. Cleyn & Tinker argued that its sales of identical or substitutable fabrics are relatively modest because the market for these fabrics is Peerless, which has chosen to bypass it. Cleyn & Tinker also argued that, based on the past, one cannot infer that it is unable to supply Peerless because, in the early 1990s, Peerless's strategy was to build its entitlement to TPLs.

With respect to commercial quantities, Cleyn & Tinker argued that it can provide any of its fabrics, including development fabrics, in the amounts required by Peerless, either by way of sampling or in respect of an order. Cleyn & Tinker argued that the range of fabrics available worldwide is a hundredfold wider and that Peerless will always find more appealing fabrics, but that, at least, Cleyn & Tinker should be offered the opportunity to supply the needs of the Canadian suit manufacturers.

Cleyn & Tinker argued that it makes identical or substitutable fabrics. It submitted that these fabrics are identical in every respect, contain the same percentages of fine animal hair and are available in a range of designs and colours. Cleyn & Tinker submitted that the only issue is that the range of fabrics may not be wide enough, but that, in any event, there is no reason for a Canadian textile manufacturer to offer a wider range because Peerless has shown no interest in dealing with Cleyn & Tinker.

Cleyn & Tinker argued that it has made large investments in order to produce fabrics with an average fibre diameter as low as 18 microns. Moreover, it argued that, based on the evidence, the hand is utterly imperceptible between a 100 percent wool suit, with a fibre diameter of 18 microns, and a suit made from wool, with a fibre diameter of 17.5 microns and a cashmere content of 5 percent. This, according to Cleyn & Tinker, reinforces the notion that, within each price point, suits of similar quality compete against each other. It is the label/trade name that sells the suit. Cleyn & Tinker also argued that, in the fashion industry, Canadian textile mills cannot compete with European mills in terms of cachet. Cleyn & Tinker argued that, should tariff relief be granted as requested, apparel manufacturers will be encouraged to ask suppliers to sprinkle a few strands of fine animal hair in the fabrics in order to save duties and take advantage of the elusive cachet.

With respect to the issue of relative benefits, Cleyn & Tinker argued that, based on the information, it is difficult to see how Peerless has been harmed by the tariff now in place. Moreover, Cleyn & Tinker submitted that tariff relief would not help Canada, since Peerless's customers are in the United States. It further argued that the potential damage to Cleyn & Tinker in terms of reduced margins vastly outweighs the potential gains to Peerless. In this connection, Cleyn & Tinker argued that the mainstay of its production,

i.e. 100 percent wool fabrics with low microns, would clearly be threatened and that the only response to this threat would be to reduce prices for these fabrics.

## CTI

The CTI argued that the only appropriate conclusion that can be reached in this case is that tariff relief not be recommended. The CTI argued that the evidence shows a trivial consumption of the subject fabrics in the United States by U.S. apparel manufacturers and that there is no growing demand for these fabrics in that country. The CTI submitted that, since no one can distinguish between suits or other garments made from the subject fabrics from those made from 100 percent wool, there is no reason to propose a different tariff item.

As for Peerless's assertion that it is willing to pay an additional \$4/m<sup>2</sup> to get the NAFTA-qualified subject fabrics, the CTI dismissed this argument as a myth. The CTI argued that, in order to relieve any shortage of TPLs, Peerless needs only to shift some of its purchases of other imported fabrics to any NAFTA-origin fabrics.

The CTI argued that, since the market does not require fine animal hair blends in significant volumes, Cleyn & Tinker has no incentive to push the market in a direction where it is not naturally going. The CTI argued that the market has moved towards finer fabrics made from 100 percent wool and that Cleyn & Tinker has responded to that demand. In this connection, the CTI argued that Cleyn & Tinker has moved so far down the micron scale of fibre fineness that one cannot distinguish domestic fabrics from imports on these grounds.

The CTI argued that, in some cases, the prices for identical or substitutable fabrics are comparable to the prices for the subject fabrics. In addition, the CTI submitted that there seems to be little correlation between fine animal hair and price, regardless of the source of the fabrics. The CTI argued that it was not the market that demanded apparel made from the subject fabrics, but rather the favourable exchange rate with Korea and the low prices for cashmere in the late 1990s that contributed to Peerless's success with suits made from fine wool and cashmere. Given that the circumstances have now changed, the CTI argued that there is no justification for Peerless to perpetuate this windfall. The CTI also argued that, had a \$0.92/m<sup>2</sup> duty which was imposed on the subject fabrics not been imposed on all imports of 100 percent wool fabrics as well, all fabrics sold by Cleyn & Tinker would have been under price and margin pressure.

## ANALYSIS

The Minister's terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff and, in so doing, to take into account all relevant factors, including the substitutability of an imported fabric for a domestic fabric and the ability of domestic producers to serve the Canadian downstream industries. Consequently, the Tribunal's decision on whether to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

Peerless's request of July 7, 1999, for tariff relief covers certain woven fabrics of combed wool and of combed fine animal hair, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers. This request is similar to Request No. TR-96-005 filed by Peerless in June 1997. That case covered woven fabrics of combed or carded yarns, wholly of virgin wool and fine animal hair, containing not less than 10 percent by weight of fine animal hair, as certified by the exporter, of a weight exceeding 140 g/m<sup>2</sup> but not exceeding 300 g/m<sup>2</sup>. On February 20, 1998, the Tribunal recommended to the Minister that tariff

relief not be granted on importations of these fabrics.<sup>15</sup> In that particular case, the Tribunal concluded that the domestic textile industry produced similar or substitutable fabrics or had the technical capabilities to produce identical or substitutable fabrics.

As indicated earlier, the product description contained in the notice of commencement of investigation differs from the fabrics described in the request filed by Peerless, in that the latter contained a reference to a minimum content of fine animal hair of 15 percent. Because it was unable to identify the different fine animal hair fibres in the samples provided by Peerless and to accurately determine the percentage by weight between fine animal hair and wool, the CCRA recommended against a condition that the fabrics contain a certain percentage of fine animal hair. Accordingly, the Tribunal issued a notice of commencement of investigation that did not refer to a minimum content of fine animal hair and, thus, covered a much broader range of fabrics than that covered in the request. However, during the course of the investigation, the CCRA advised the Tribunal that a laboratory in the United States had the ability to test for content of fine animal hair in wool fabrics. Consequently, the CCRA revised its earlier position and stated that the text of a proposed tariff item could include quantitative percentages for wool/fine animal hair blends and that it also could include a provision that fabrics imported under that tariff item must be “certified by the exporter” as meeting the terms of the item.

Since the Tribunal’s report of February 1998, Peerless’s needs with respect to combed wool/fine animal hair fabrics have increased. According to Peerless, this category of fabrics has become more important and significant over the last two to three years. Peerless stated that, in the men’s apparel market, “the bar is constantly raised on giving the best, trying to be the best value”<sup>16</sup> and, in order to remain competitive, one is always “challenged to come up with new fabrics, better fabrics, finer fabrics”.<sup>17</sup> Several witnesses<sup>18</sup> for Peerless indicated that the market for apparel made from the subject fabrics has grown because of, *inter alia*, a change in men’s fashion to less formal wear, especially in the workplace, and a tendency to wear year-round clothing made from better-quality mid-weight fabrics. On the other hand, although Cleyn & Tinker has continued to develop wool/fine animal hair blends since 1998, its main focus has remained on the production of 100 percent worsted wool fabrics and worsted wool/man-made fibre blends. Furthermore, the Tribunal notes that the production and sales of Cleyn & Tinker’s wool/fine animal hair blends have remained flat since 1998 and still represent a very small portion of the company’s total activity.<sup>19</sup>

The Tribunal also notes that, in the 1980s, Peerless was Cleyn & Tinker’s largest customer. Moreover, with the advent of free trade, the relationship between the two companies became, in essence, non-existent<sup>20</sup> until Peerless recently purchased a significant volume of 100 percent wool fabrics for the fall 2000 season. During the course of the investigation, there was some question as to who should take the initiative in promoting or seeking new fabrics. Peerless was of the view that textile mills should be the ones promoting new fabrics and “knocking on our door”<sup>21</sup> to sell their fabrics. While there is no definite answer to this question, it is somewhat strange that Cleyn & Tinker did not take a more aggressive approach in promoting its wool/fine animal hair blends immediately following the Tribunal’s recommendation in early 1998. On balance, the Tribunal believes that the onus resides principally with the supplier to make its

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15. *Supra* note 12.

16. *Transcript of Public Hearing*, 3 May 2000, at 16.

17. *Ibid.* at 20.

18. Affiliated, Ari Freed, Cohen, Coppley, Delfino, Golden Brand, Harry Rosen, Jack Victor and Samuelsohn.

19. Tribunal Exhibit TR-99-004-43 (protected) at 13.

20. *Transcript of Public Hearing*, 4 May 2000, at 300.

21. *Transcript of Public Hearing*, 3 May 2000, at 36.

product line known in the marketplace and that Cleyn & Tinker should have vigorously pursued Peerless's business in respect of its wool/fine animal hair fabrics.

Based on the evidence, it is clear that there seem to be two very different perspectives on where the men's wear market is going with respect to the subject fabrics. On the one hand, Peerless sees an enormous potential for wool/fine animal hair blends and, therefore, must have access to a large variety of these fabrics. On the other hand, Cleyn & Tinker's business strategy has been to focus on other mainstream fabrics, such as 100 percent wool fabrics and other wool blends, and does not perceive a significant increase in the interest of its customers for wool/fine animal hair fabrics. In this connection, the Tribunal notes that Cleyn & Tinker's view is corroborated, to a degree, by Warren, which was of the view that, overall, the market demand in the United States for wool/fine animal hair blends with small percentages of fine animal hair had not increased in the recent past.<sup>22</sup>

In examining the issues of (1) Cleyn & Tinker's ability to supply fabrics that are identical to or substitutable for the subject fabrics, (2) the impact of tariff relief on Cleyn & Tinker or any other Canadian producer and (3) the net economic benefits to Canada of reducing the tariff on the subject fabrics, the Tribunal focussed its attention on wool/fine animal hair blends used in the manufacture of men's suits and sports jackets.

During the investigation, Peerless argued that Cleyn & Tinker has the ability to make substitutable fabrics, but has chosen not to make them in the range of designs and colours and in the quantities required.<sup>23</sup> In this connection, the Tribunal notes that, in its report to the Minister concerning Peerless's previous request for tariff relief, it stated that "Cleyn & Tinker presently produces worsted fabrics that are similar to or substitutable for the subject fabrics".<sup>24</sup> The Tribunal also pointed out that, "[a]lthough the production volume of worsted wool combined with fine animal hair represents only a small portion of Cleyn & Tinker's total production, it is clear that the company has the technical capabilities to produce and supply high-quality fabrics containing wool and fine animal hair that would meet the specific requirement of Peerless".<sup>25</sup>

The Tribunal agrees with Peerless that, in the mid-price segment of the market, merchandise buyers place considerable importance on the uniqueness of the quality, design, colour and hand of the fabric. As for the uniqueness of the design and colour of the fabric, it is evident that an apparel manufacturer must have access to a wide range of mills in order to obtain, every fashion season, new colours and designs that will satisfy the retail industry. In this context, Peerless indicated that, before it buys from a mill, it gauges that mill's capabilities and expertise.<sup>26</sup> Peerless also stated that it buys all types of fabrics from at least 90 different mills around the world.<sup>27</sup>

It is apparent from the evidence that Peerless's ability to source wool/fine animal hair fabrics offshore has contributed to the enormous success of suits made from lightweight and year-round fabrics. At the hearing, Peerless presented a suit made from 95 percent wool, measuring 17.5 microns,<sup>28</sup> of 5 percent

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22. *Transcript of Public Hearing*, 4 May 2000, at 466.

23. *Transcript of Public Hearing*, 3 May 2000, at 64.

24. *Supra* note 12 at 8.

25. *Ibid.*

26. *Transcript of Public Hearing*, 3 May 2000, at 121.

27. *Ibid.* at 72.

28. The micronaire value is a function of both fibre fineness and maturity. Low values indicate fine and/or immature fibres; high values indicate coarse and/or mature fibres.

cashmere, with a worsted count of 100.<sup>29</sup> Peerless explained that, over the last two to three years, this type of suit has been very successful and has become a significant part of its business.<sup>30</sup> The Tribunal notes that Cleyn & Tinker is not in the niche market of the very fine wool/fine animal hair blends, but rather in the broader market of wool fabrics with average fibre diameters of 18.5 to 21 microns, with the preponderance of its production averaging 20 microns.<sup>31</sup> This leads the Tribunal to believe that Cleyn & Tinker is not now, nor will it be in the foreseeable future, in a position to produce and supply, in commercial quantities, the very fine wool/fine animal hair fabrics required by Peerless.

Against this background, the Tribunal noted considerable common ground at the hearing between Peerless and Cleyn & Tinker with respect to a scenario under which tariff relief could be granted on fabrics for use in the manufacture of men's suits, suit-type jackets, blazers, vests (waistcoats) and trousers. In essence, the tariff relief would cover woven fabrics of combed wool with average fibre diameters of 17.5 microns or less and combed fine animal hair, containing 7 percent or more combed fine animal hair. No agreement, however, was reached on the worsted count, where Cleyn & Tinker suggested that tariff relief be limited to fabrics with very fine yarns, i. e. worsted count of 100 or more, while Peerless proposed, a worsted count of 90 or more. Based on Peerless's requirements to have very fine fabrics, especially for suits, the Tribunal is of the view that, to be of any benefit to Peerless, tariff relief would have to be provided on fabrics made from yarns of a worsted count of 90 or more<sup>32</sup> and that tariff relief on fabrics so described would have absolutely no negative impact on Cleyn & Tinker.

Turning to sports jackets, it is noted that the fabrics for this end use are generally made from coarser yarns and that the content of fine animal hair is usually higher than that for suit fabrics. During the proceedings, Peerless and Cleyn & Tinker did not come to an understanding as to the restrictions to apply, should tariff relief be granted on imported fabrics of wool/fine animal hair for use in the production of sports jackets. Cleyn & Tinker argued that tariff relief should be limited to suit fabrics, whereas Peerless proposed a minimum content of 10 percent fine animal hair for the wool/fine animal hair blends used in the manufacture of jackets, with no restriction as to the diameter of the wool fibre.

As with other end products, notably suits, the Tribunal is of the view that Peerless must have competitive access to a wide range of new fabrics with a variety of designs and colours in order to satisfy the growing demand for sports jackets made from wool/fine animal hair blends. On this point, Ari Freed indicated that there is a need for a variety of colours and patterns for suits and jackets made from the subject fabrics.<sup>33</sup> The Tribunal notes that Cleyn & Tinker has some jacket fabrics containing 10 to 20 percent fine animal hair that are in production or under development. These fabrics, however, represent a very small portion of Cleyn & Tinker's overall activity and are only available in a limited range of patterns and colours. As with suit fabrics, the Tribunal believes that Cleyn & Tinker is not now, nor will it be in the foreseeable future, in a position to produce and supply, in a wide variety of colours and designs, the fabrics required for jackets.

Recognizing that there is a need for a wider range of fabrics with different diameters for the wool fibre component, the Tribunal is of the view that the only limitation that should apply to imported fabrics for

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29. Exhibit A-13; and *Transcript of Public Hearing*, 3 May 2000, at 19-21 and 152. A worsted count of 100 is equivalent to approximately 90 decitex.

30. *Transcript of Public Hearing*, 3 May 2000, at 20 and 168-69.

31. Exhibit D-1 at 10; and *Transcript of Public Hearing*, 4 May 2000, at 287.

32. Equivalent to approximately 100 decitex or less per single yarn.

33. *Transcript of Public Hearing*, 3 May 2000, at 264.

use in the production of sports jackets is one pertaining to the content of fine animal hair. As reflected in Peerless's request of July 7, 1999, the Tribunal is of the view that a 15 percent threshold is appropriate.

In terms of the economic impact, Cleyn & Tinker argued that tariff relief would undermine its ability to maintain production of the competing jacket fabrics. Although there may be some costs associated to Cleyn & Tinker's jacket fabrics, the Tribunal is of the view that any such costs are substantially outweighed by the benefits to be gained by Peerless and other apparel manufacturers that use these fabrics. It is also noted that the effective rate of duty on the subject fabrics is in the order of 8 percent. Therefore, any reduction of price for the jacket fabrics as a result of tariff relief would be much less than the stated MFN rate of 16 percent. Furthermore, the evidence is clear that Cleyn & Tinker's main focus is principally on the production of fabrics that do not compete directly with the fine animal hair jacket fabrics imported by Peerless and, in the Tribunal's view, this situation is unlikely to change significantly in the near future.

With respect to administering a new tariff item to provide the relief requested, there may be some costs associated with the analysis of some fabrics under a provision that fabrics imported under a tariff item must be "certified by the exporter". These costs, however, are not expected to be significant.

On balance, the Tribunal sees little costs in granting the tariff relief requested by Peerless, given the limitations surrounding the importation of the wool/fine animal hair blends. On the basis of the information available to the Tribunal, tariff relief would provide yearly benefits to Peerless and other users of the subject fabrics in excess of \$500,000. In addition, tariff relief would provide benefits to users of the subject fabrics in the form of reduced costs, thereby enhancing their competitive position in the market, especially in the United States. Moreover, tariff relief should also result in greater production and sales, which could translate into the hiring of new employees and benefits to the consumer in terms of greater choice and lower prices.

As for Peerless's 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. Peerless has provided no evidence to warrant such a recommendation.

**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:

- (1) woven fabrics, solely of combed wool with average fibre diameters of 17.5 microns or less and of combed fine animal hair, measuring 100 decitex or less per single yarn, containing not less than 7 percent by weight of fine animal hair, as certified by the exporter, of a weight of 140 g/m<sup>2</sup> or more but not exceeding 300 g/m<sup>2</sup>, of subheading No. 5112.11 or 5112.19, for use in the manufacture of men's suits, suit-type jackets, blazers, vests (waistcoats) and trousers; and
- (2) woven fabrics, solely of combed wool and of combed fine animal hair, containing not less than 15 percent by weight of fine animal hair, as certified by the exporter, of a weight of 140 g/m<sup>2</sup> or more but not exceeding 300 g/m<sup>2</sup>, of subheading No. 5112.11 or 5112.19, for use in the manufacture of men's sports jackets.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer  
Member

Zdenek Kvarda

Zdenek Kvarda  
Member