

**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
CAULFEILD APPAREL GROUP LTD.
REGARDING
A CERTAIN COTTON FABRIC**

MARCH 31, 1999

CAULFEILD APPAREL GROUP LTD.

REQUEST NO.: TR-98-007

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INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference¹ from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.² The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

Pursuant to the Minister's reference, the Tribunal received, on October 21, 1998, a request from Caulfeild Apparel Group Ltd. (Caulfeild) of Downsview, Ontario, for the removal, for an indeterminate period of time, of the customs duty on importations from all countries of cotton flannel fabric, for use in the manufacture of men's nightshirts, pyjamas, bathrobes or similar articles, and boxer shorts. On December 21, 1998, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation, which was widely distributed and published in the January 2, 1999, edition of the *Canada Gazette*, Part I.³ The fabric under investigation was described in the notice as woven fabric, solely of cotton, brushed on both sides, of yarns of different colours, of subheading No. 5208.43, for use in the manufacture of men's nightshirts, pyjamas, bathrobes or similar articles, and boxer shorts, of heading No. 62.07 (the subject fabric).

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabric. A request for information also was sent to potential importers of the subject fabric. A letter was sent to the Department of National Revenue (Revenue Canada) requesting information on the tariff classification of the subject fabric, and a sample was provided for laboratory analysis. Letters were sent as well to a number of other government departments requesting information and advice.

A staff investigation report was not necessary for the purposes of this investigation since potential producers of fabrics identical to or substitutable for the subject fabric did not oppose the request.

A public hearing was not held for this investigation.

PRODUCT INFORMATION

The subject fabric is a 3-thread twill weave and is woven from single yarns of different colours. The yarns are composed solely of cotton fibres. The subject fabric is lightly brushed on both sides and weighs approximately 144 g/m². The cotton flannel fabric, as described in the notice of commencement of investigation, is subject to different tariff treatments, depending on its end use.

In general, the subject fabric is classified for customs purposes under tariff item No. 5208.43.90 of the schedule to the *Customs Tariff*⁴ and, as of January 1, 1999, is dutiable at 14.5 percent *ad valorem* under the MFN tariff, at 6.5 percent *ad valorem* under the Mexico tariff, and at 7.0 percent *ad valorem* under the Chile tariff and is duty free under the US tariff and the Canada-Israel Agreement tariff. Where, as in

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1. On March 20 and July 24, 1996, and on November 26, 1997, the Minister of Finance revised the terms of reference.
 2. R.S.C. 1985, c. 47 (4th Supp.).
 3. Vol. 133, No. 1 at 5.
 4. R.S.C. 1985, c. 41 (3rd Supp.).

Caulfeild's case, the woven fabric of cotton contains 85 percent or more by weight of cotton and is for use in the manufacture of apparel or apparel accessories, the fabric is classified under tariff item No. 9935.00.00. As of January 1, 1999, it is dutiable at 10.0 percent *ad valorem* under the MFN tariff, and at 8.0 percent *ad valorem* under the Mexico tariff and is duty free under the US tariff, the Canada-Israel Agreement tariff and the Chile tariff. However, where the fabric is used in the manufacture of women's, boys' or girls' nightshirts, nightdresses, pyjamas, negligées, bathrobes, dressing gowns or similar articles, and boxer shorts, of heading No. 62.07 or 62.08, it is classified under classification No. 5208.43.30.00 and is duty free.⁵

REPRESENTATIONS

Users of the Subject Fabric

Caulfeild has been manufacturing apparel since 1886 and employs a total of 71 people. It imports the subject fabric from the People's Republic of China, Pakistan and Portugal. It performs the design, marker making and merchandising functions, while it contracts out operations such as cutting, sewing and finishing.

Caulfeild alleged that identical or substitutable fabrics are not available in Canada and that this has been demonstrated in previous cases handled by the Tribunal. Caulfeild stated that requests for tariff relief on similar or virtually identical fabrics have been granted.⁶ Caulfeild claimed that lower fabric costs resulting from tariff relief would allow it to be more competitive with imported ready-made garments in both domestic and export markets. The company submitted that increased sales would translate into the hiring of new employees, the purchase of new equipment and spin-offs for local support industries. Caulfeild also claimed that it is already feeling the impact of tariff relief granted to manufacturers of women's apparel that may be diverting some of their fabrics to the men's sector.

Majestic Industries (Canada) Ltd., of Montréal, Quebec, a manufacturer of men's bathrobes, sleepwear, shirts, swimwear and fleece garments, supported Caulfeild's request for tariff relief. Universal Mfg. Inc., of Montréal, a company that specializes in the production of women's and children's sleepwear, and Stanfield's Limited (Stanfield's), of Truro, Nova Scotia, a manufacturer of underwear, pyjamas, loungewear, knit shirts, hosiery, T-shirts and turtlenecks, also supported Caulfeild's request for tariff relief. Stanfield's indicated that identical or substitutable fabrics are not available in Canada and that the removal of the customs duty on the subject fabric would reduce the cost of garments to the retailer which, in turn, would lower the cost to the consumer. According to Stanfield's, tariff relief also would make it more competitive with offshore products, protect jobs and possibly increase production.

Domestic Textile Producers

The Canadian Textiles Institute (CTI) identified Consoltex Inc., Doubletex, DIFCO Performance Fabrics Inc. and Rayonese Textile Inc. as possible manufacturers of fabrics identical to or substitutable for the subject fabric. The companies were sent Tribunal questionnaires, but no replies were received. Consoltex Inc., however, advised the Tribunal that it did not oppose Caulfeild's request for tariff relief because similar fabrics, when used in the manufacture of women's and children's sleepwear and loungewear, are duty free.

5. Classification No. 5208.43.30.00 was introduced into the *Customs Tariff* as a result of the implementation of a recommendation by the Tribunal in Request Nos. TR-97-002 and TR-97-003.

6. This refers to the Tribunal's recommendation in Request Nos. TR-97-002 and TR-97-003, which was implemented on June 18, 1998.

Other Submissions

Metro Textiles Inc. (Metro) of Downsview, imports the subject fabric and sells it to manufacturers of men's and women's apparel. Metro supported the request for tariff relief. It stated that it makes no sense to limit the duty-free entry to fabrics for use solely in the manufacture of women's, boys' or girls' sleepwear, loungewear and boxer shorts. Metro indicated that the removal of the customs duty on the subject fabric would enable Canadian manufacturers to compete.

MWG Apparel Corp. (MWG) of Winnipeg, Manitoba, a manufacturer of shirts, jackets and headwear, supported the request for tariff relief. MWG stated that the current textile tariff structure imposes duties on fabrics which are not produced in Canada, thereby artificially inflating the cost of inputs and making the company less competitive with imports of finished products.

Telio and Cie (Telio) of Montréal, and Trend-Tex Fabrics Inc. (Trend-Tex) of Port Coquitlam, British Columbia, importers which sell fabrics to manufacturers of apparel and to fabric retailers, also supported Caulfeild's request. Telio indicated that tariff relief would make Canadian manufacturers more competitive, stimulate production and discourage the importation of finished goods. However, Telio submitted that the end use should not be restricted to men's sleepwear, loungewear and boxer shorts. It argued that such end-use restrictions are impossible to monitor and create an unnecessary paper burden. Trend-Tex stated that identical or substitutable fabrics are not available in Canada and that tariff relief would reduce the cost of inputs.

OTHER INFORMATION

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada does maintain quota restraints on woven cotton fabric, finished (subcategory 32.2), imported from the People's Republic of China, Hong Kong and Taiwan. Accordingly, this coverage includes cotton fabric of subheading 5208.43. The bilateral agreement, which provides for this restriction, between the Government of Canada and the Government of the People's Republic of China, has been in place since 1987. The bilateral agreements between the Government of Canada and the Government of Hong Kong and the Taiwan Textile Federation have been in place since 1979.

DFAIT also indicated that it will consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove customs duties on the basis of non-availability. Ex-quota treatment will be granted only 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.

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

The CTI and the Canadian Apparel Manufacturers Institute filed notices of appearance with the Tribunal, but did not make any representations regarding the request.

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 to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

Caulfeild claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabric. This claim was not contested by any domestic fabric producers. Therefore, other than the corresponding duty revenues forgone by the government, the Tribunal does not believe that there will be any direct commercial costs associated with the removal of the customs duty on the importation of the subject fabric.

The Tribunal also notes that Order in Council P.C. 1998-1119 dated June 18, 1998, amended the schedule to the *Customs Tariff*, *inter alia*, by removing the customs duty on the importation of woven fabric, solely of cotton, brushed on both sides, for use in the manufacture of women's, boys' or girls' nightshirts, nightdresses, pyjamas, negligees, bathrobes, dressing gowns or similar articles, and boxer shorts, of heading No. 62.07 or 62.08. The request for tariff relief filed by Caulfeild is for a fabric similar to that covered by Order in Council P.C. 1998-1119, except that the end products are men's sleepwear, loungewear and boxer shorts.

On the basis of the information available to the Tribunal, granting tariff relief would result in yearly benefits to Caulfeild and other users in excess of \$100,000. In addition, tariff relief would provide benefits to users in the form of cost reductions which could translate into the hiring of new employees, the purchase of new equipment and the provision of further spin-off benefits for local support industries.

In summary, the Tribunal finds that the tariff relief requested by Caulfeild would provide net economic gains to Canada.

The Tribunal has reviewed Telio's request to expand the end-use provision to cover all other end uses. Generally, the Tribunal will only consider such requests when received prior to the initiation of the investigation. Exceptionally, the Tribunal will consider the feasibility of a minor expansion of the scope of the investigation such as for slightly heavier fabric and, when it does so, will communicate with the parties for their views on the proposal. To expand the scope of the investigation at such a late stage in the process, in order to cover all other end uses, would require that the Tribunal re-open its investigation and issue a notice of amendment to the notice of commencement of investigation. The Tribunal is of the view that to do so would unduly delay the issuance of a recommendation in respect of Caulfeild's request for tariff relief. In the circumstances, the Tribunal has decided not to expand the scope of the investigation beyond the goods described in the notice of commencement of investigation. Should Telio wish to obtain tariff relief for all other end uses, a new request must be filed according to the Tribunal's *Textile Reference Guide*.

RECOMMENDATION

The Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries, of woven fabric, solely of cotton, brushed on both sides, of yarns of different colours, of subheading No. 5208.43, for use in the manufacture of men's nightshirts, pyjamas, bathrobes or similar articles, and boxer shorts, of heading No. 62.07.

Anita Szlazak

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Presiding Member

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