



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Safeguards

ORDER AND REASONS

Safeguard Inquiry
No. CS-2005-002

Textile and Apparel Goods

*Order issued
Friday, October 6, 2006*

*Reasons issued
Tuesday, October 24, 2006*

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IN THE MATTER of a complaint filed on July 7, 2005, by UNITE HERE Canada, on its own behalf, on behalf of its members and on behalf of Ms. Radika Quansoon, Mr. Carlos Costa and Ms. Christina Ling, pursuant to subsections 30.22(1) and 30.23(1) of the *Canadian International Trade Tribunal Act*;

AND WHEREAS UNITE HERE Canada is requesting that the Canadian International Trade Tribunal initiate a safeguard inquiry in respect of China into whether imported textile and apparel goods originating in the People's Republic of China are subject to an action that causes or threatens to cause a significant diversion of trade into the domestic market in Canada or whether such goods cause or threaten to cause market disruption to the producers of the like or directly competitive goods.

**TEXTILE AND APPAREL GOODS FROM THE PEOPLE'S REPUBLIC OF
CHINA**

ORDER

The Canadian International Trade Tribunal hereby finds that UNITE HERE Canada, on its own behalf, on behalf of its members and on behalf of Ms. Radika Quansoon, Mr. Carlos Costa and Ms. Christina Ling, does not have the required standing to file a complaint pursuant to subsections 30.22(1) and 30.23(1) of the *Canadian International Trade Tribunal Act*. The Canadian International Trade Tribunal is therefore without jurisdiction to entertain or further assess the complaint.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Elaine Feldman
Elaine Feldman
Member

Serge Fréchette
Serge Fréchette
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued at a later date.

STATEMENT OF REASONS

BACKGROUND

1. On July 7, 2005, pursuant to subsections 30.22(1) and 30.23(1) of the *Canadian International Trade Tribunal Act*,¹ UNITE HERE Canada (UNITE HERE), on its own behalf, on behalf of its members and on behalf of Ms. Radika Quansoon, Mr. Carlos Costa and Ms. Christina Ling (collectively the complainants), filed a complaint requesting that the Canadian International Trade Tribunal (the Tribunal) initiate a safeguard inquiry in respect of China into whether imported textile and apparel goods originating in the People's Republic of China (China) (the subject goods) are subject to an action that causes or threatens to cause a significant diversion of trade into the domestic market in Canada or whether such goods cause or threaten to cause market disruption to the producers of the like or directly competitive goods.

PRODUCT

2. The complainants have identified 9 broad product categories that are the subject of the complaint: Men's and Boys' Suits; Men's and Boys' Jackets and Blazers; Men's and Boys' Overcoats; Men's and Boys' Pants; Men's and Boys' Woven Dress Shirts; Women's and Girls' Brassieres; Women's and Girls' Jackets and Blazers; Women's and Girls' Pants; and Women's and Girls' Skirts (the subject goods). The categories fall under 52 different code groups of the Harmonized Commodity Description and Coding System. No more specific product information was provided by the complainants.

DOMESTIC PRODUCERS

3. According to the complainants, the Canadian producers of the subject goods include the complainants as well as the firms engaged in the production of like or directly competitive goods. UNITE HERE is a union whose members include persons employed in the textile and apparel industries in Canada. Ms. Quansoon and Mr. Costa are employed in the apparel industry. Ms. Ling worked in the apparel industry until she was laid off due to downsizing.

4. The complainants identified 23 companies which, they alleged, supported their complaint. Six of these companies wrote to the Tribunal to advise it that they supported the complaint.

STANDING TO BRING COMPLAINT

5. Before the Tribunal can determine whether the complaint is properly documented and assess whether the information presented therein discloses a reasonable indication of market disruption or significant diversion of trade, it must be satisfied that the complainants have the necessary standing to file the complaint. If not, the Tribunal is without jurisdiction to entertain the complaint.

Position of the Complainants

6. The complainants submitted that they have standing to make and file a complaint as either "domestic producer[s]" or "any person or association acting on behalf of any such domestic producer[s]". They argued that the *CITT Act* does not define the term "domestic producer".

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

7. The complainants relied on section 12 of the *Interpretation Act*,² submitting that the Tribunal must give a broad, liberal and purposive construction of the *CITT Act*. They also relied on the decision of the Supreme Court of Canada in *Clarke v. Clarke*³ and on *Sullivan and Driedger on the Construction of Statutes*.⁴

8. The complainants argued that “the plain meaning of ‘producer’ includes ‘workers’, and the term is consistently defined to include both persons and organizations that make, manufacture or grow goods, crops or services for sale.” They submitted that workers are an essential and necessary role in the production process of the subject goods.

9. The complainants further submitted that there are strong policy reasons for regarding workers and unions as “producers” for the purposes of the *CITT Act* in the context of globalization. They further argued that “workers” are the most vulnerable to the effects of increased imports and that, in the context of the apparel and textile industries, there is an equality argument related to the *Canadian Charter of Rights and Freedoms*, given the concentration of women as workers in these industries.

ANALYSIS

10. The relevant sections of the *CITT Act* that deal with safeguard measures in respect of China arise from *An Act to amend certain Acts as a result of the accession of the People’s Republic of China to the Agreement Establishing the World Trade Organization*,⁵ which received royal assent on June 13, 2002. That act gives effect to the rights of Canada pursuant to the Protocol on the Accession of the People’s Republic of China to the World Trade Organization that came into effect on December 11, 2001, by incorporating sections 30.2 to 30.26 into the *CITT Act* under the heading “SAFEGUARD MEASURES IN RESPECT OF CHINA”.

11. Safeguard inquiries in respect of China are commenced in one of two ways: by referral of a matter from the Governor in Council to the Tribunal for inquiry pursuant to subsection 30.21(1) of the *CITT Act*, or by the direct filing of a complaint with the Tribunal by a domestic producer of goods that are like or directly competitive with the subject goods or by any person or association acting on behalf of any such domestic producer pursuant to subsections 30.22(1) or 30.23(1). The Tribunal has no jurisdiction to self-initiate a safeguard inquiry in respect of China.

12. The *CITT Act* is an economic regulatory statute which, in part, implements Canada’s international trade obligations. The purpose of the safeguard provisions in respect of China found in sections 30.2 to 30.26 of the *CITT Act* is to provide authority to impose safeguard measures to protect Canadian industries from market disruption or threat of market disruption caused by increased imports from China, or from significant trade diversion caused by safeguard actions on imports from China taken by other WTO members.

13. Sections 30.2 to 30.26 of the *CITT Act* provide for Canada’s implementation regime for safeguard measures in respect of China. Subsections 30.22(1) and 30.23(1) stipulate the conditions under which a domestic producer may file a complaint against imports originating in China; they read as follows:

30.22(1) Any domestic producer of goods that are like or directly competitive with goods originating in the People’s Republic of China being imported into Canada, or any person or association acting on behalf of any such domestic producer, may file a written complaint with the Tribunal alleging that

2. R.S.C. 1985, c. I-21.

3. [1990] 2 S.C.R. 795.

4. Ruth Sullivan, 4th ed. (Markham: Butterworths, 2002) at 383.

5. S.C. 2002, c. 19.

the imported goods are being imported in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods.

30.23(1) Any domestic producer of goods that are like or directly competitive with goods that are subject to any action, or any person or association acting on behalf of any such domestic producer, may file a written complaint with the Tribunal alleging that the action causes or threatens to cause a significant diversion of trade into the domestic market in Canada.

14. The phrase “domestic producer of goods that are like or directly competitive with the goods originating in the People’s Republic of China being imported into Canada, or any person or association acting on behalf of any such domestic producer” and, more particularly, the words “domestic producer” within that phrase, are central to the task of the Tribunal. Those words are intended to describe those persons who, Parliament believes, have the necessary interest to bring a complaint to the Tribunal that could lead to the initiation of a safeguard inquiry into imports originating in China. Neither the entire phrase nor the specific words “domestic producer” are defined in the *CITT Act*. However, it is clear from that language that Parliament set out two conditions for the initiation of a safeguard action against imports from China: the complaint must be brought by “producers” or “persons or associations acting on their behalf”; and such producers must be domestic.

15. The Tribunal takes as given that Ms. Quansoon, Mr. Costa and Ms. Ling are “domestic”, as they are or have been employed in the apparel industry in Canada. The issue before the Tribunal is whether they and UNITE HERE are producers, or whether UNITE HERE is an association acting on behalf of producers.

16. The starting point for statutory interpretation is clearly set forth in the decision of the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.*⁶ In that decision, the Court quoted the following passage, from *Construction of Statutes*, as best encapsulating the approach on which it preferred to rely:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.⁷

Grammatical and Ordinary Sense

17. According to *The Canadian Oxford Dictionary*,⁸ the primary meaning of the word “producer” is “a person, company, country, etc. that produces goods or materials”.⁹ The verb “produce” means to “bring (something) into existence”, to “manufacture (goods) from raw materials, etc.”¹⁰ Considering those two definitions, it seems reasonable therefore to understand the word “producer” to mean in its ordinary sense “a person, a company, a country, etc., that manufacture goods or materials”.

18. A trade union, such as UNITE HERE, is an organization that represents workers in their labour relationship with their employer in the textile and apparel industries. Nothing in the facts that were brought to the Tribunal’s attention by the complainants establishes that the organization itself is, in any way, producing textile or apparel goods within any of the dictionary meanings mentioned in the previous

6. [1998] 1 S.C.R. 27, at para. 21 [*Rizzo*]; see also *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213.

7. Elmer A. Driedger, 2d ed. (Toronto: Butterworths, 1983) at 87.

8. 2nd ed. (Toronto: Oxford University Press, 2004).

9. *Ibid* at 1154.

10. *Ibid*.

paragraph. However, the individual workers who are represented by that trade union, including Ms. Quansoon and Mr. Costa, are employed in the apparel industry. As such, their services are applied to textile and apparel production activities in Canada. In that sense, the Tribunal is convinced that, by selling their services to their employer, they are contributing to the production of textile and apparel products. As such, they are “producers” within the ordinary sense of the word. UNITE HERE represents its members and is thus an association acting on behalf of domestic producers.

19. However, as stated by the Supreme Court of Canada in *Rizzo*, the statutory interpretation exercise is not limited to considering the grammatical and ordinary sense of those words in isolation. Those words must be examined in their context, harmoniously with the scheme of the act, the object of the act, and the intention of Parliament. It is therefore incumbent upon the Tribunal to determine whether there is anything in the context of the words examined, in the object of the *CITT Act* or in the intention of Parliament that could influence its preliminary view that Ms. Quansoon, Mr. Costa and Ms. Ling are domestic producers and UNITE HERE is an association acting on behalf of domestic producers.

Context, Object and Intention

20. In carrying out its analysis, the Tribunal concentrated on subsection 30.22(1) of the *CITT Act*, which deals with market disruption, but considers that its analysis is equally applicable to subsection 30.23(1), which deals with trade diversion. These sections need to be read in the context of the other provisions of the safeguard measures in respect of China, sections 30.2 to 30.26, as well as the general safeguard provisions of the *CITT Act*, which provide for complaints to be brought to the Tribunal.

21. In particular, subsection 30.22(3) of the *CITT Act* allows the Tribunal to initiate an inquiry only if the complaint meets the requirements of subsection 30.22(2), which are:

(2) A complaint shall

(a) state in reasonable detail the facts on which the allegations are based;

(b) state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by the domestic producers by whom or on whose behalf the complaint is filed;

(c) be accompanied by any information that is available to the complainant to support the facts referred to in paragraph (a) and to substantiate the estimate referred to in paragraph (b);

(d) be accompanied by any other information that may be required by the rules; and

(e) make any other representations that the complainant deems relevant to the matter.

22. These provisions indicate that the object of the legislative scheme is to provide for a means to inquire into the effects of imports from China on domestic **goods** that are in direct competition with these imports. What is intended to be protected by this scheme is the competitive situation of domestic goods *vis-à-vis* imports from China. This scheme is about “market disruption” and “trade diversion” as it affects the domestic production of goods. It is intended to allow for the adoption of border measures on imported goods that will nullify the injurious effects of the imported goods on domestic goods. In the opinion of the Tribunal, the producers that are in competition commercially with the imports from China are those who organize and manage the productions of the goods, have title and ownership of those goods, are the owners of the capital required to pursue the business activities and, at the end, who generate profits or losses out of the manufacturing process. This opinion is reinforced by certain passages in sections 30.22 and 30.23 of the *CITT Act*. The nature of the information required to be submitted, and of which the Tribunal must be satisfied in order to initiate an inquiry under section 30.22 or 30.23, is information that would ordinarily be

in the possession of a party that has a very close connection with the goods that are like or directly competitive with goods originating in China being imported into Canada, for example, total Canadian production of like or directly competitive goods produced by domestic producers, supporting information indicating market disruption or trade diversion, and reliable evidence that the complaint is made by domestic producers of a major proportion of domestic production of the like or directly competitive goods. These requirements strongly suggest that producers that can file a complaint are producers who have in their possession production and financial information directly relevant to the production of the subject goods. Only domestic producers with a direct economic interest would ordinarily have access to this information to support their complaints, employees would not.

23. Furthermore, the Tribunal finds the definition of “market disruption” found in section 30.2 of the *CITT Act* to be instructive. It defines “market disruption” as “a rapid increase in the importation of goods that are like or directly competitive with goods produced by a *domestic industry*, in absolute terms or relative to the production of those goods by a *domestic industry*, so as to be a significant cause of material injury, or threat of material injury, to the *domestic industry*” (emphasis added). In the Tribunal’s view, this wording also indicates that employees are not what is contemplated by “producer”, since the term “industry” is not generally understood to include employees.¹¹

24. Thus, the Tribunal is of the view that, when considered in its context and harmoniously with the scheme of the act, the object of the act, and the intention of Parliament, the word “producer” does not extend to employees. The concept of “producer” in sections 30.22 and 30.23 of the *CITT Act* requires a more direct economic interest in the production and in the like or directly competitive goods. In the Tribunal’s opinion, employees are not “domestic producers of goods that are like or directly competitive with goods originating in the People’s Republic of China being imported into Canada” within the meaning of sections 30.22 and 30.23.

25. The language under examination is identical to the language used in subsection 23(1) of the *CITT Act*, which deals with the initiation of a safeguard action under the more general safeguard provisions of the *CITT Act*. During the committee debate on Bill C-110,¹² in 1988, it was recognized that, while a complaint could be made by or on behalf of domestic producers (undefined), there was no provision for direct access to the Tribunal by a firm employing, or any trade union representing, workers who produce the goods involved.¹³ An amendment to Bill C-110 to permit such direct access to the Tribunal was rejected by Parliament on the basis that it would effectively remove the Governor in Council’s authority to define “domestic production” in the *Canadian International Trade Tribunal Regulations*.^{14, 15}

26. Committee debates do not constitute a source of law *per se*; however, according to the jurisprudence, regard can be given to Parliamentary debates and speeches when assessing the purpose of an act and the intention of Parliament.¹⁶ In this particular case, a “sister” provision of the act, the provision that sets the standing requirements for initiating a safeguard action under the general safeguard regime of the act, was considered as not allowing trade unions representing workers to initiate general safeguard actions. Identical language to that considered by Parliament in the general safeguard provisions in 1988 is found in

11. The *Canadian Oxford Dictionary* describes “industry” as follows: “1 a) a branch of trade or manufacture. b) trade and manufacture collectively; c) any commercial undertaking that provides services.”

12. Assented to on 13 September 1988, S.C.1988, c. 56.

13. *House of Commons Debates*, Volume XIV, 1988 (12 July 1988) at 17475.

14. *Ibid.* at 17486.

15. S.O.R./89-35 [*CITT Regulations*].

16. *Eastmain Band v. Canada (Federal Administrator)*, [1993] 1 F.C. 501 (C.A.).

the safeguard in respect of China provisions of 2002. The Tribunal considers this an additional indication that domestic producers with standing to bring a safeguard complaint in respect of China do not include employees or unions acting on their behalf.

27. The complainants have not satisfied the Tribunal that they are “domestic producers” within the meaning of sections 30.22 or 30.23 of the *CITT Act*. Ms. Quansoon, Mr. Costa and Ms. Ling have not established the existence of the necessary economic interest to support their claim that they are producers. UNITE HERE is acting on behalf of persons employed in the textile and apparel industries. Its standing to bring a complaint is dependent on the standing of such employees. As the Tribunal has concluded above, the employees do not have standing to bring a complaint, therefore UNITE HERE is also without standing.

28. To the extent that the complainants argued support from certain manufacturers of textile and apparel products, the Tribunal does not equate support for a complaint with UNITE HERE being an association acting on behalf of such manufacturers. None of the manufacturers have indicated that UNITE HERE is authorized to act on their behalf, nor has it been asserted as such by UNITE HERE. There is a significant difference between a party expressing support for another person’s actions and that party authorizing the person to act on the party’s behalf.

29. With respect to the *Canadian Charter of Rights and Freedoms* argument raised by the complainants, they did not develop or expand upon it and, accordingly, the Tribunal has not addressed it.

30. Accordingly, the Tribunal is not satisfied that the complainants are “domestic producers” or that they constitute “any person or association acting on behalf of such domestic producers” within the meaning of sections 30.22 and 30.23 of the *CITT Act*. Therefore, the Tribunal hereby finds that UNITE HERE, on its own behalf, on behalf of its members and on behalf of Ms. Quansoon, Mr. Costa and Ms. Ling, does not have the required standing to file a complaint pursuant to subsections 30.22(1) and 30.23(1) of the *CITT Act*. The Tribunal is therefore without jurisdiction to entertain or further assess the complaint.

Pierre Gosselin
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Presiding Member

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