



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Textiles

RECOMMENDATION

Request No. TR-2006-001

Peerless Clothing Inc.

(Woven Polyester/Elastomeric
Stretch Lining Fabrics)

*Recommendation issued
Tuesday, October 17, 2006*

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Tribunal Members:	Elaine Feldman, Presiding Member Ellen Fry, Member Serge Fréchette, Member
Research Director:	Réal Roy
Research Manager:	Paul R. Berlinguette
Research Officer:	Jo-Anne Smith
Counsel for the Tribunal:	Eric Wildhaber
Assistant Registrar:	Valérie Cannavino
Registrar Support Officer:	Dimitra Arfanis

Please address all communications to:

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

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

REPORT TO THE MINISTER OF FINANCE

INTRODUCTION

1. 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.

2. On June 5, 2006, 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 non-textured polyester fabrics for use as lining in the manufacture of men's and boys' suits, vests (waistcoats), jackets (sportcoats and blazers), and trousers. Peerless also requested tariff relief retroactive to the date of filing of the request.

3. On July 19, 2006, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,³ which was distributed to known interested parties. The fabrics under investigation were described in the notice as "woven fabrics, plain weave, consisting solely of non-textured polyester filaments mixed with elastomeric filaments, having the elastomeric yarn only in the weft, of a weight of less than 90 g/m², of tariff item No. 5407.61.99, for use as lining in the manufacture of apparel" (the subject fabrics). The end-use provision suggested by Peerless was modified to remove all gender and product specificity. Peerless agreed to this change in the product description.

4. As part of the investigation, the Tribunal's research staff sent questionnaires to potential domestic producers of fabrics identical to or substitutable for the subject fabrics. A request for information was also sent to potential users and importers of the subject fabrics. A letter was sent to the Canada Border Services Agency (CBSA), requesting a complete description of the physical characteristics of the fabric sample submitted by Peerless, an opinion on whether the requested tariff relief would be administrable and suggested wording to describe the subject fabrics should tariff relief be recommended. Letters were also sent to the Department of Foreign Affairs and International Trade (DFAIT) and the Department of Industry, requesting information that could assist the Tribunal in its investigation.

5. 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 fabrics indicated that they would not oppose the request, as long as it incorporated the end uses originally requested by Peerless.

6. On September 11, 2006, the Tribunal indicated that it was its intention to issue a report to the Minister concerning the request based on the information on the record.

7. A public hearing was not held for this investigation.⁴

1. The terms of reference were last modified on October 27, 2005.

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

3. C. Gaz. 2006.I.2264.

4. Pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499, the Tribunal has the authority to proceed by way of written submissions.

PRODUCT INFORMATION

8. Peerless imports the subject fabrics from Germany and the Republic of Korea. It submitted one fabric sample with its request for tariff relief. The sample was a plain woven fabric of non-textured yarns of different colours, consisting of synthetic (polyester) filaments and elastomeric yarns of polyurethane and of a weight of approximately 66 g/m².

9. Peerless's production process entails the spreading, cutting, sewing and pressing of different textile inputs for use in the manufacture of men's and boys' suits, vests, jackets (sportcoats and blazers) and trousers. No operations are subcontracted.

10. As of January 1, 2006, the subject fabrics, classified for customs purposes under classification No. 5407.61.99.52 of the schedule to the *Customs Tariff*,⁵ are dutiable at 14 percent *ad valorem* under the Most-Favoured-Nation (MFN) Tariff and the Costa Rica Tariff, and are duty free under the United States Tariff, the Least Developed Country Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

REPRESENTATIONS

Clothing Industry

Peerless

11. Peerless has been manufacturing men's apparel in Canada since 1919. The company is privately owned and employs in excess of 2,000 people. Following the *Canada-United States Free Trade Agreement*, it 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 well-known brand names, such as Chaps by Ralph Lauren, Ralph by Ralph Lauren and DKNY (Donna Karan New York).

12. Peerless claimed that no Canadian textile manufacturer produces and supplies fabrics that are identical to or substitutable for the subject fabrics.

13. Peerless indicated that, over the past years, the fashion trend has constantly moved towards comfort in garments. In this regard, it stated that, to make men's fine-tailored clothing more comfortable, designs and fashions that allow for stretch have been introduced into the market. Peerless has had to meet this demand for garments with greater stretch and use new fabrics in order to remain in the forefront of the men's fine-tailored clothing market.

14. The subject fabrics provide 4 percent or more stretch when required. This allows the fabric to return to its original size. For example, the stretch is in the horizontal across the back of a jacket to increase comfort when stretch is required for movements, such as crossing the arms. According to Peerless, mechanical stretch, which can be achieved by means of crimped polyester filament, is not substitutable for stretch provided by polyester/elastomeric filaments. Mechanical stretch does not provide as much stretch and wears out with usage, resulting in the garment not returning to its original shape.

15. Peerless stated that the subject fabrics are needed, as they perform well in its European engineering production method. In some cases, pieces are glued together rather than sewn, and the garments are exposed to high heat and humidity during certain stages of production. The subject fabrics are able to withstand the

5. S.C. 1997, c. 36.

rigours of the production process without any degradation in their ability to stretch and maintain stretch characteristics in the finished garments.

16. Peerless stated that competition in the men's apparel industry is global in scale and is very fierce. It indicated that the removal of the customs duty on imports of the subject fabrics would allow it to stay competitive in the market and possibly increase its market share in domestic and foreign markets. Peerless also stated that tariff relief would help maintain current employment levels. It indicated that any cost savings would be passed on to the consumer.

17. Peerless indicated that the market drives its business decisions. It stated that, if the market demands garments with features created by the subject fabrics, it must produce such garments or face a decline in sales. Peerless must attain certain cost and mark-up parameters in order to remain at a price point where it is competitive with the offerings of other suppliers. It also indicated that, if it were unable to satisfy the market demand in North America for such apparel, this demand would be supplied by foreign imports of finished goods.

18. Peerless indicated that, because of the *North American Free Trade Agreement*,⁶ it can no longer benefit from a duty drawback⁷ for the imported inputs that it uses for its apparel exported under Canadian TPLs to the United States and that this situation seriously damages its export business. According to Peerless, tariff relief would assist the company in overcoming the elimination of duty drawback.

Riviera Inc. and Weston Apparel Manufacturing Inc.

19. Although these companies reported that they have not imported the subject fabrics, both supported Peerless's request.

Textile Industry

Consoltex Inc. (Consoltex)

20. Consoltex, of Ville Saint-Laurent, Quebec, a major producer of fabrics of man-made fibres, informed the Tribunal that it did not oppose the request for tariff relief on the subject fabrics for end uses specified in Peerless's request, but objected to the Tribunal's expansion of the end use to include all apparel. It stated that it produces and sells identical or substitutable fabrics for outerwear apparel (e.g. ski wear and active wear), as well as for uniforms and workwear apparel.

6. *North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [NAFTA].

7. NAFTA provides preferential tariff treatment for certain quantities of apparel despite their incorporation of non-North American (i.e. non-originating) fabric. This preferential tariff treatment takes the form of Canadian tariff preference levels (TPLs). TPLs permit the import of a fixed quantity of certain goods into Canada, the United States and Mexico at the NAFTA rate of duty. Goods entering a NAFTA country in quantities above the TPLs are subject to the higher MFN rate of duty. A new method of determining duty drawback, called "the lesser-of concept", was introduced in NAFTA. Under this new scheme, the duty drawback, or 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.

Doubletex

21. Doubletex informed the Tribunal that it did not oppose the request for tariff relief on the subject fabrics.

Canadian Textiles Institute (CTI)

22. The CTI submitted that the Tribunal appeared to have gone beyond its mandate and expanded the end-use provision to all apparel. According to the CTI, such an approach to describing the subject fabrics for this and future textile investigations could jeopardize the interests of the Canadian textile industry.

OTHER INFORMATION

23. DFAIT informed the Tribunal that, under the World Trade Organization *Agreement on Textiles and Clothing*, Canada's quantitative restraints on imports of textiles and apparel were eliminated on January 1, 2005. Therefore, Canada does not maintain any quantitative restrictions on the subject fabrics.

24. The CBSA indicated that there would be no additional costs, over and above those it normally incurs, to administer the tariff relief should it be granted.

ANALYSIS

25. 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.

26. Peerless claimed that there is no domestic production of fabrics identical to or substitutable for the subject fabrics. Domestic fabric producers did not contest this claim with respect to the end uses specified in Peerless's original description, i.e. suits, vests (waistcoats), jackets (sportcoats and blazers) and trousers. In light of the concerns expressed by Consoltex regarding the broader end-use provision contained in the notice of commencement of investigation, the Tribunal is of the view that Consoltex could suffer some harm as a result of tariff relief on the basis of a generic end-use provision. In this regard, Consoltex stated that it produces identical or substitutable fabrics for outerwear apparel (e.g. ski wear and active wear), as well as for uniforms and workwear apparel. However, other than the corresponding duty revenues forgone by the Government, the Tribunal does not have evidence of any direct commercial costs associated with the removal of the customs duty on the importation of the subject fabrics for the end uses originally requested by Peerless. On the basis of the information contained in Peerless's request, tariff relief would result in yearly benefits to users of the subject fabrics in excess of \$350,000. In addition, tariff relief would provide benefits to users in the form of potentially increased sales and stable employment, as well as reduced costs, which could translate into benefits to the consumer in terms of lower prices. In summary, the Tribunal finds that the tariff relief requested by Peerless would provide net economic gains for Canada.

27. 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. However, it is the Tribunal's view that the commencement of tariff relief is warranted as soon as possible.

RECOMMENDATION

28. 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 woven fabrics, plain weave, consisting solely of non-textured polyester filaments mixed with elastomeric filaments, having the elastomeric yarn only in the weft, of a weight of less than 90 g/m², of tariff item No. 5407.61.99, for use as lining in the manufacture of suits, vests (waistcoats), jackets (sportcoats and blazers) and trousers. The tariff relief should be granted as soon as possible.

Elaine Feldman

Elaine Feldman
Presiding Member

Ellen Fry

Ellen Fry
Member

Serge Fréchette

Serge Fréchette
Member

Susanne Grimes

Susanne Grimes
Acting Secretary