



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Textiles

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## RECOMMENDATION

Request No. TR-2007-001

Peerless Clothing Inc.

(Nonwovens of Polyester and  
Viscose Rayon Staple Fibres)

*Recommendation issued  
November 6, 2007*

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## REPORT TO THE MINISTER OF FINANCE

### INTRODUCTION

1. On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference<sup>1</sup> from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.<sup>2</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.

2. On April 23, 2007, 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 nonwovens of polyester and rayon staple fibres, weighing between 50 g/m<sup>2</sup> and 90 g/m<sup>2</sup>, for use in the manufacture of shoulder pads used in the manufacture of men's and boys' suit jackets and jackets (sportcoats) and blazers.

3. On May 7, 2007, Peerless amended its request to exclude fabrics weighing 70 g/m<sup>2</sup> or less, which are already duty free under tariff item No. 5603.92.91 of the schedule to the *Customs Tariff*.<sup>3</sup>

4. On July 30, 2007, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation into the matter. The nonwovens under investigation were described in the notice of commencement as “. . . nonwovens of polyester staple fibres mixed solely with viscose rayon staple fibres, impregnated with a bonding agent of acrylic polymer, weighing more than 70 g/m<sup>2</sup> but not more than 150 g/m<sup>2</sup>, for use in the manufacture of shoulder pads used in the manufacture of suit jackets, jackets (sportcoats) and blazers, of tariff item No. 5603.93.90 . . .” (the subject nonwovens).

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

6. The Tribunal provided a staff investigation report summarizing the information received from the CBSA, Peerless, Parapad Inc. (Parapad), Fybon Industries Ltd. (Fybon), Texel Inc. (Texel) and Matador Converters Co., Ltd. (Matador) to those that had become parties to the proceedings by filing notices of appearance in the investigation. Following distribution of the staff investigation report, Peerless filed a submission with the Tribunal.

7. No public hearing was held for this investigation.<sup>4</sup>

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

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

3. S.C. 1997, c. 36.

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. The request for tariff relief covers nonwovens imported from all countries. The sample submitted with Peerless's request was a nonwoven made from a blend of man-made synthetic staple fibres (polyester) and man-made artificial staple fibres (viscose rayon). The fabric consisted of 80 percent by weight of polyester and 20 percent by weight of viscose rayon. The fabric weighed 82 g/m<sup>2</sup>.

9. As of January 1, 2007, the subject nonwovens are classified for customs purposes under classification No. 5603.93.90.20 and are dutiable at 14 percent *ad valorem* under the most-favoured-nation (MFN) Tariff and 4 percent under 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

### Apparel Industry

#### Peerless

10. Peerless, of Montréal, Quebec, has been manufacturing men's apparel in Canada since 1919. The company is Canada's largest manufacturer of men's fine tailored clothing, with a significant presence in the United States. Peerless has signed exclusive licence agreements to market well-known brand names, such as Chaps by Ralph Lauren and Ralph by Ralph Lauren.

11. Peerless claimed that there is no domestic production of identical or substitutable nonwovens. It noted that the comparable nonwovens in lighter weights are already duty free under tariff item Nos. 5603.91.40 (not exceeding 25 g/m<sup>2</sup>) and 5603.92.91 (more than 25 g/m<sup>2</sup> but not more than 70 g/m<sup>2</sup>).

12. Peerless uses the subject nonwovens to manufacture both shoulder pad tops and shoulder pad linings. Shoulder pad tops give form and shape to shoulder pads that, in turn, provide stability and durability to the shoulder area of jackets. Shoulder pad linings, which form the bottom layer of shoulder pads, act as a carrier for the inside or wadding part of shoulder pads.

13. Peerless manufactures jackets in a highly automated environment that allows for the large-scale manufacture of men's and boys' fine clothing. 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. Peerless stated that the subject nonwovens are able to withstand the rigors of the production process without any degradation in their ability to stretch and maintain their shape. Further, it stated that the viscose rayon in the subject nonwovens adds breathability and softness.

14. Peerless indicated that the trend in the fashion market over the past years has consistently been towards more comfortable and lighter fabrics. According to Peerless, it is obliged to use lightweight nonwovens, such as the subject nonwovens that it imports from Germany, to make men's fine tailored clothing that is more comfortable and durable. Peerless contended that the market drives its business decisions and that, if the market demands garments with features made possible by the subject nonwovens, it must produce such garments or face a decline in sales.

15. As for the anticipated benefits of tariff relief, Peerless submitted that competition in the men's apparel industry is global in scale and very fierce and that removal of the customs duty on imports of the subject nonwovens would allow it to stay competitive and possibly increase its share of domestic and foreign markets. Peerless stated that tariff relief would help it to maintain its current employment levels. It

indicated that any cost savings would be passed on to the consumer. Finally, Peerless submitted that tariff relief would offset the negative consequences of the elimination of duty drawback under the *North American Free Trade Agreement*,<sup>5</sup> with respect to the imported inputs that it uses in apparel exported to the United States.<sup>6</sup>

16. In its reply submission, Peerless stated that Fybon had provided no evidence of production or planned production of an identical nonwoven and noted that Fybon had indicated that it does not sell identical or substitutable nonwovens to the apparel industry for use in the manufacture of shoulder pads. Peerless further noted that the sample provided by Fybon failed to meet the definition of the subject nonwovens, i.e. it did not contain any rayon and was not bonded with an acrylic polymer. Peerless also stated that the evidence submitted by Fybon established that the selling price of its nonwovens was significantly less than the cost of the subject nonwovens imported by Peerless and Parapad. If the Fybon nonwovens were substitutable, then, given their significant cost advantage, Canadian manufacturers would purchase them.

17. Peerless submitted that, although Matador opposed the request, it had provided no evidence of production or planned production of identical or substitutable nonwovens.

18. Peerless submitted that Texel gave no evidence of current production of identical or substitutable nonwovens, only that it was capable of producing identical or substitutable fabrics weighing more than 100 g/m<sup>2</sup>. Peerless submitted that, if the Tribunal were to conclude that Texel's other products might be adversely affected by tariff relief, the weight range in the product description could be restricted to products weighing less than 100 g/m<sup>2</sup>.

19. Peerless requested that tariff relief be retroactive to either January 1, 2005, the effective date of the broad tariff relief implemented by the Government pursuant to Reference Nos. MN-2004-002<sup>7</sup> and MN-2005-001, or, in the alternative, to April 23, 2007, the date of filing of the request for tariff relief.

#### Parapad

20. Parapad, of Montréal, Quebec, a manufacturer of shoulder pads and sleeve-heads, supported Peerless's request for tariff relief. According to Parapad, identical or substitutable nonwovens are not manufactured domestically.

21. Parapad uses the subject nonwovens to manufacture the tops and linings (bottoms) of shoulder pads. The subject nonwovens are soft, dry and washable, and have good recovery characteristics, i.e. they return to their original shape when folded or squeezed.

22. Parapad submitted that the fashion trend is for lighter-weight and more durable products and that, therefore, manufacturers must be able to source raw materials from around the globe to meet the requirements of their customers. Removal of the customs duty would allow Parapad and its customers to

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5. *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].

6. Non-NAFTA fabrics (i.e. fabrics not originating in North America) that are incorporated into apparel exported to the United States would generally qualify for duty drawback, unless the apparel is exported under zero duty tariff preference levels.

7. On the basis of production reported by Matador and Texel, the Tribunal recommended the retention of duty protection for tariff item No. 5603.93.90.

remain competitive. Parapad also submitted that the removal of the customs duty would allow it to maintain its current employment levels and to continue to export its product to the United States and Mexico.

### **Producers of Nonwovens**

#### Fybon

23. Fybon, of Toronto, Ontario, produces a variety of nonwovens, including both carded and needlepunched products.

24. Fybon opposed Peerless's request on the basis that identical or substitutable products are available from several Canadian manufacturers, including Fybon. According to Fybon, the subject nonwovens can be used in many applications. Fybon submitted that it had not sold identical or substitutable nonwovens for use in the manufacture of shoulder pads in recent years because clothing production had moved offshore. However, Fybon submitted that, in the past, it had sold identical or substitutable products to domestic producers for use in the manufacture of shoulder pads.

25. The CBSA analysed a sample of an allegedly identical or substitutable product provided by Fybon. The sample consisted of polyester staple fibres that had been impregnated with a polymer binder other than acrylic and weighed 66 g/m<sup>2</sup>. Fybon indicated that it did not currently have an identical fabric available.

26. Fybon submitted that, if the requested tariff relief were granted, it would have a negative impact on its entire operation, including sales, gross margin and employment.

#### Texel

27. Texel, of Saint-Elzéar-de-Beauce, Quebec, manufactures needlepunched nonwovens in the range of 65 g/m<sup>2</sup> to more than 3,000 g/m<sup>2</sup>.

28. Texel did not oppose Peerless's request for tariff relief with respect to the subject nonwovens weighing less than 100 g/m<sup>2</sup>. However, Texel opposed Peerless's request with respect to the subject nonwovens weighing more than 100 g/m<sup>2</sup>. Texel submitted that providing such tariff relief would put at risk its current sales of nonwovens for interlinings and shoulder pads.

29. Texel submitted that it is capable of supplying identical or substitutable products weighing more than 100 g/m<sup>2</sup> using its current manufacturing equipment, with a lead time of three months. It currently supplies Peerless with a needlepunched polyester nonwoven weighing 90 g/m<sup>2</sup> for use as interlinings in the manufacture of men's and boys' suit jackets and jackets (sportcoats) and blazers. This nonwoven is manufactured using a thermal bonding process, which, Texel submitted, provides the same rigidity as an acrylic binder.

#### Matador

30. Matador opposed Peerless's request and submitted that it was capable of producing a similar product. It did not provide a questionnaire response.

## OTHER INFORMATION

31. Under the World Trade Organization *Agreement on Textiles and Clothing*, quantitative restrictions on imports of textiles and apparel were eliminated on January 1, 2005. Therefore, Canada does not maintain any quantitative restrictions on the subject nonwovens.

32. The CBSA indicated that there would be no additional costs, above those that it already incurs, to administer the tariff relief requested for the subject nonwovens.

## ANALYSIS

33. 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 economic factors, including, where appropriate, the availability of substitutable inputs from domestic sources and a domestic versus foreign price comparison. 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 maximize net economic gains for Canada and would be administrable on a cost-effective basis.

34. With respect to the issue of substitutability, the Tribunal notes that the single sample provided by Fybon failed to meet the definition of the subject nonwovens, in that it was composed of different fibres and had a different coating. Fybon failed to provide any additional information to convince the Tribunal that it had the capability to produce identical or substitutable nonwovens and to sell them to apparel producers. In order to conclude that Fybon had the capability to supply the market with identical or substitutable nonwovens, the Tribunal would have required evidence, such as documented information on production or orders on hand. Finally, in view of the significant difference in the prices of the subject nonwovens imported by Peerless and Parapad and the relatively lower-priced nonwovens sold by Fybon, the Tribunal is not persuaded that the tariff provides any effective protection for Fybon's production or that, conversely, its removal would cause Fybon to lose sales.

35. Although Matador opposed Peerless's request, it provided no evidence to support its submission that it has the capability to produce identical or substitutable nonwovens.

36. As for Texel, since it did not oppose Peerless's request for tariff relief with respect to the subject nonwovens weighing less than 100 g/m<sup>2</sup>, the Tribunal concludes that Texel does not produce an identical or substitutable product in this weight range.

37. Other than the corresponding duty revenues forgone by the Government, the Tribunal concludes that, on the basis of the evidence, there are no direct commercial costs associated with the removal of the tariff on the subject nonwovens weighing up to and including 100 g/m<sup>2</sup>.

38. In view of the evidence on the record, the Tribunal is not convinced that removal of the tariff on the subject nonwovens weighing more than 100 g/m<sup>2</sup> would maximize net economic gains for Canada. The Tribunal notes Texel's submission that such tariff relief would put at risk its current sales of nonwovens for interlinings and shoulder pads in this weight range. It also notes that Peerless did not oppose restricting tariff relief to the subject nonwovens weighing less than 100 g/m<sup>2</sup> if the Tribunal were to conclude that Texel's sales might be negatively affected. Finally, the Tribunal notes that Peerless's original request to the Tribunal covered the subject nonwovens only up to 90 g/m<sup>2</sup>.<sup>8</sup>

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8. Tribunal Exhibit TR-2007-001-01.



39. Given that the maximum weight indicated in the description of the subject nonwovens was increased to 150 g/m<sup>2</sup> when the investigation was initiated, it was this revised maximum that the Tribunal considered. In the end, it accepts Texel's view that tariff relief on importations of the subject nonwovens weighing more than 100 g/m<sup>2</sup> would put its sales at risk and, therefore, concludes that 100 g/m<sup>2</sup> is an appropriate upper limit.

40. In summary, on the basis of the information provided to the Tribunal, tariff relief would result in yearly benefits to users of the subject nonwovens of more than \$50,000. In addition, tariff relief would provide benefits to users in the form of potentially increased sales, including in export markets such as the United States, where the recent appreciation of the Canadian dollar may have put domestic apparel producers at a competitive disadvantage.

41. 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 as soon as possible is warranted.

### RECOMMENDATION

42. In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted as soon as possible, for an indeterminate period of time, on importations from all countries of nonwovens of polyester staple fibres mixed solely with viscose rayon staple fibres, impregnated with a bonding agent of acrylic polymer, weighing more than 70 g/m<sup>2</sup> but not more than 100 g/m<sup>2</sup>, of tariff item No. 5603.93.90, for use in the manufacture of shoulder pads used in the manufacture of suit jackets, jackets (sportcoats) and blazers.

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