



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Textiles

RECOMMENDATION

Request No. TR-2004-001

Tricots Liesse (1983) Inc.

(Textured Filament Yarns of Nylon
or Polyester)

*Recommendation issued
Monday, January 9, 2006*

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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 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 January 17, 2005, pursuant to the Minister's reference, the Tribunal received a request from Tricots Liesse (1983) Inc. (Liesse), of Montréal, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations from all countries of textured filament yarns of nylon for use in the manufacture of swimwear fabrics. On April 29, 2005, Liesse amended its request to include textured filament yarns of polyester. It also requested that two alternative end-use provisions (for use in the manufacture of swimwear fabrics or the manufacture of fabrics on circular knitting machines equipped with more than 100 yarn feeds) be included in the proposed description of the yarns. Liesse indicated that the latter end use arises from the fact that the incidence and economic consequences of yarn defects increase with the number of yarn feeds on circular knitting machines.

3. On August 16, 2005, 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 yarns under investigation were described in the notice as "synthetic filament yarn, solely of nylon, textured, measuring per single yarn 75 decitex or more but not exceeding 200 decitex, of subheading No. 5402.31, for use in the manufacture of swimwear fabrics or in the manufacture of fabrics on circular knitting machines equipped with more than 100 yarn feeds; and synthetic filament yarn, solely of polyester, textured, measuring per single yarn 150 decitex or more but not exceeding 200 decitex, of subheading No. 5402.33, for use in the manufacture of swimwear fabrics or in the manufacture of fabrics on circular knitting machines equipped with more than 100 yarn feeds" (the subject yarns).

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

5. A staff investigation report summarizing the information received from the CBSA, ITCan, Liesse, Bermatex Inc. (Bermatex), Canatex Industries (Canatex) and Texturon Inc. (Texturon) was provided to those that had become parties to the proceedings by filing notices of appearance in the investigation. Following distribution of the staff investigation report, Bermatex, Canatex and Liesse filed submissions with the Tribunal.

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

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

3. C. Gaz. 2005.I.2797.

6. As part of the investigation, staff visited Liesse, Bermatex, Canatex and Maillot Baltex Inc. to view production processes.

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

PRODUCT INFORMATION

8. The request for tariff relief covers yarns imported from all countries. Three of the four samples submitted with Liesse's request for tariff relief were single yarns, textured, consisting of synthetic (nylon) man-made filaments, measuring 85, 168 and 185 decitex per single yarn. The fourth sample was a single yarn, textured, consisting of synthetic (polyester) man-made filaments, measuring 178 decitex per single yarn. Liesse specializes in the production of swimwear fabrics made on circular knitting machines with 122 yarn feeds, but also produces fabrics for other end uses. Liesse's production consists mainly of single-knit and double-knit fabrics, and its product range includes plain, striped and jacquard fabrics, as well as fabrics with multi-level designs and surfaces.

9. As of January 1, 2006, the subject yarns, classified for customs purposes under classification Nos. 5402.31.00.29 (nylon) and 5402.33.90.19 (polyester) of the schedule to the *Customs Tariff*,⁵ are dutiable at 8.0 percent *ad valorem* under the Most-Favoured-Nation (MFN) Tariff and the General Preferential Tariff and at 3.5 percent *ad valorem* 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

Knitting Industry

Liesse

10. Liesse has been producing circular knitted fabrics in Canada since 1964. It indicated that it has invested more than \$25 million in a new state-of-the-art dye house and equipment in the last six years in order to expand its product range and serve the needs of the high-end market.

11. Liesse stated that textured yarns represent the major portion of the raw material cost in swimwear fabrics and, in the third quarter of 2004, its principal supplier in the United States, Unifi Inc. (Unifi), imposed yarn price increases without regard to the increasing pressures on yarn users and their customers downstream. It stated that the United States accounts for two thirds of its sales and that its U.S. customers are demanding lower fabric prices because of the pressure from quota-free swimwear imports from the People's Republic of China (China). Liesse indicated that, because of a downward pressure on fabric prices and an upward pressure on textured yarn costs, it has placed orders for yarns with Asian suppliers.

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.

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

12. Liesse stated that the duty imposed on imports of yarns from Asia is a rapidly accumulating expense and that, although it is exporting a high proportion of its total fabric production, the duty that it pays on the yarns is not recoverable by drawback.⁶

13. Liesse claimed that granting tariff relief on the subject yarns would have no significant effect on domestic yarn processors. It stated that, in the past three years, the proportion of its textured yarn purchased from domestic producers has been less than 5 percent. Liesse indicated that as quality, in the form of yarns which could be used reliably to produce barré-free fabrics,⁷ became an issue, it gravitated to yarn suppliers in the United States. Liesse also stated that, although yarns of the same physical descriptions may be available from domestic producers, they are exceptionally sensitive to the risk of barré and are not suitable for use in the production of swimwear fabrics on circular knitting machines equipped with a high number of feeds (110 feeds or more).

14. Liesse stated that the benefit of the requested relief would be to relieve the company of the burden of the tariff on all imported textured synthetic yarns for use in making circular knit fabrics on the high-feed, high-productivity knitting machines used to serve the swimwear market. According to Liesse, yarns from the same sources are used (duty-free) in imported swimwear (made in China and elsewhere), which threatens the survival of the company indirectly by threatening the survival of its customers directly.

15. In its reply submission, Liesse submitted that, unlike all other knitters, it utilizes yarns mainly on machines using more than 100 yarn feeds and specializes in the production of fabrics for use in swimwear. It accounts for a very high proportion, if not all, of swimwear fabric production in Canada.

16. Liesse submitted that productivity rises strongly as the number of yarn feeds increases. As the number of machine feeds increases, the risk increases that a single package of defective yarns will ruin the quality of a large quantity of fabric. Liesse is exceptionally sensitive to textured yarn quality because a high proportion of its output is knitted on machines running an exceptionally high number of yarn feeds and because swimwear fabric customers and consumers are exceptionally sensitive to product flaws.

17. Liesse submitted that its purchases of domestic textured yarns plunged below 100,000 kg in 2000 and have been negligible ever since. According to Liesse, the primary reason for the shift is to ensure quality. Liesse submitted that it ordered 10,000 kg of yarns from Canatex in the spring of 2005 for the purpose of producing barré-free swimwear fabric on 122-feed knitting machines, and yarns were delivered

6. The *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*] provides preferential tariff treatment for certain quantities of textile goods despite their incorporation of non-North American (i.e. non-originating) inputs. This preferential tariff treatment takes the form of Canadian tariff preference levels (TPLs). TPLs permit the import of a fixed quantity of certain textile 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* on January 1, 1996, for Canada-United States trade and on January 1, 2001, for Canada-Mexico trade. 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.

7. Liesse indicated that a “barré” is an irreparable defect which gets its name from the unwanted striping (i.e. bars or streaks) of the affected fabric and that the incidence of barré is higher in knitting with textured yarns than spun yarns. It stated that the number of barré is highest in fabrics dyed to solid dark shades and that the higher the number of yarn feeds, the higher the incidence and cost of this problem.

in June 2005. However, most of these yarns were returned because barré problems were evident from the start of the knitting trial.

18. Liesse submitted that it has proposed tariff relief on either of two alternative end-use provisions and that it is clear from the information on the record that no significant sales have been made from domestic production under either in 2004-2005. The investigation confirms that the tariff relief can be implemented under either of the proposed end-use provisions without any negative impact on the production, sales or employment of domestic producers of textured yarns.

19. Liesse submitted that it agrees with the CBSA's physical descriptions of the samples. The CBSA has advised the Tribunal that it can administer tariff relief for the subject yarns that are "for use in the manufacture of swimwear fabrics". However, the CBSA has recommended against the alternative end use which is "for use in the manufacture of fabrics on circular knitting machines equipped with more than 100 yarn feeds" because this activity would be nearly impossible to audit. Because its production records are highly computerized, Liesse submitted that it can meet any reasonable audit requirement of the CBSA and maintain a "bullet-proof", verifiable audit trail.

20. Liesse submitted that Caribbean Basin Initiative (CBI) issues⁸ have no relevance in this case because the swimwear fabrics that Liesse exports to the United States are cut and sewn in the United States.

21. Liesse submitted that, with respect to a swimwear yarn development program in 1998-99 involving Dupont, Bermatex and Liesse, it is clear that the program was plagued with quality problems and that each participant would have had an interest in minimizing its responsibility for such problems.

22. Liesse submitted that Canatex did not sell yarns to Liesse during the inquiry period and that the request for tariff relief has been designed so as not to interfere with any known production and sales of Canatex yarns. In placing an order for 10,000 kg of yarns with Canatex, Liesse provided a fresh opportunity for Canatex to demonstrate an ability to meet its requirements. The result was that the yarns delivered in mid-June 2005 generated unacceptable barré from the start of the knitting trial the following week. Liesse submitted that the fact that Canatex would be closing its yarn texturing facility in December 2005 eliminated any conceivable concern that the implementation of the request might affect the production, sales or employment of Canatex.

23. Liesse submitted that it seems highly improbable that any domestic producer of textured yarns could win back business that it held in the 1990s because barré-free quality would clearly be a major issue and the domestic price would need to be competitive. If a domestic yarn supplier succeeded in matching the U.S. competition, it would need to prevail also against yarns from Asia where yarn quality, in at least one source country, is undisputedly good. Given the information on the record, this would seem impossible regardless of whether the MFN Tariff were maintained, removed or doubled.

Yarn Industry

Bermatex

24. Bermatex, of Montmagny, Quebec, has been producing polyester and nylon yarns in Canada since 1969. Bermatex pointed out that, from the beginning, it has specialized in the manufacture of value-added

8. The United States provides duty- and quota-free treatment for certain knitted apparel made in the CBI beneficiary countries from fabrics produced in the Caribbean Basin region, provided that U.S. yarns are used in producing the fabric.

textured yarns where product quality and operational flexibility are of prime importance. The yarns are produced on the very latest texturing equipment using all available accessories and manufacturing procedures in order to meet the highest quality standards.

25. Bermatex stated that it serves numerous markets, including ready-to-wear fashions, lingerie, hosiery, performance clothing (functional sportswear), sportswear (hockey and soccer sweaters, etc.), sports outerwear (anoraks, ski pants), polar fleece, furnishings, automotive, food service and textiles for medical use. It noted that its products are also used by the swimwear industry, although current sales of these products are relatively weak for reasons other than quality requirements.

26. Bermatex opposed Liesse's request for tariff relief. It stated that it has the equipment, the expertise, the production capacity and the manufacturing processes needed to produce the subject yarns. Bermatex stated that it produces exactly the same yarns and that it has five false-twist texturing units capable of producing over 35,000 kg a week of 78f68⁹ nylon yarn or well over 80,000 kg a week of 167f96 polyester yarn, as the case may be. Bermatex supplied two samples of polyester yarn and a sample of nylon yarn which it considers identical to the subject yarns.¹⁰

27. According to Bermatex, North America, like the rest of the world, has excess production capacity in textured yarns, which is why Unifi, the company that supplies some 70 percent of the entire North American textile market, has just announced the closing of a nylon texturing plant in the United States.

28. Bermatex stated that it originated the development of the 78f68 one- and two-ply textured nylon yarns used in swimwear manufacture and had worked with Liesse to develop appropriate quality and dyeing processes for the product, in cooperation with Dupont, which supplied a matte nylon yarn and Lycra. According to Bermatex, Dupont's Easy Dye matte nylon yarn is a new fibre that, in the development stage, poses technical problems. Bermatex stated that, in 1998, it had to deal with no fewer than 35 complaints from Liesse involving over \$350,000, but when the yarns and knits were analyzed, it turned out that 80 percent of Liesse's complaints did not relate to yarns from Bermatex; hence, Bermatex's decision to cease production of 78f68 nylon yarn for Liesse and the swimwear program. Bermatex pointed out that this action was necessary to ensure the company's survival, and the elimination of the program run jointly with Dupont and Liesse had enabled it to avoid losses of some \$400,000 in annual costs relating to complaints and quality defects.

29. Bermatex stated that Liesse's position to limit any tariff relief to circular knitting machines equipped with more than 100 yarn feeds instead of 50 to 100, as operated by other knitters in Canada, has no justification other than providing a benefit only to Liesse. It further stated that this situation could quickly generate problems and conflict if Liesse opted to use the subject yarns in other applications. For example, the 167f96 polyester yarn referred to in this request is the product most widely used in the manufacture of "polar" knits. Thus, all other Canadian producers of such knits would quickly find themselves facing unfair competition.

30. In response to the criticism that it is not able to produce yarns finer than 1.5 decitex per filament, Bermatex stated that, on the contrary, this is its specialty. It added that the products mentioned in this request

9. The number 78 refers to decitex, and the number 68 refers to the number of filaments.

10. These samples were sent to the CBSA for analysis. In a letter dated October 6, 2005, the CBSA advised the Tribunal that the results obtained from the laboratory analysis indicated that the characteristics found in the nylon and polyester samples of textured yarns submitted by Bermatex are very similar to those found in the samples provided by Liesse and that they are classified under the same classification numbers, i.e. Nos. 5402.31.00.29 and 5402.33.90.19 respectively.

have a fineness of 1.2 to 2.0 decitex per filament, and a substantial portion of its output consists of yarns finer than 1.0 decitex per filament, for example, 60f68 nylon, 42f48 nylon, 78f100 polyester, 110f144 polyester and 167f192 polyester.

31. Bermatex stated that the fact that it sells very little of the yarns used in the products mentioned by Liesse is due to commercial rather than technical factors. It maintained that the possibility today of obtaining partially oriented yarns (POY) from two suppliers, Invista (Dupont) and Nylstar, combined with the fact that the product is mature and fully developed technically, enables it to meet all of Liesse's quality requirements. Except for Taiwan, which is not a low-cost producing country and has high quality standards, Bermatex does not believe that Liesse can obtain supplies elsewhere in Asia, given the quality criteria that it imposes.

32. According to Bermatex, the main justification advanced by Liesse in this request is merely economic in nature, namely, low-cost supplies from certain Asian countries, particularly Thailand with respect to nylon. Bermatex stated that the risks associated with Liesse's request for tariff relief are huge, since they directly affect its viability. It maintained that such a request is bound to be extended quickly to all the other textured yarns imported into Canada. Bermatex indicated that, with respect to many textile products made in China, for example, the production costs are out of proportion with the economic costs of producing these products. The same is true of textured yarns.

33. Bermatex believes that it is an important link in the structure of the Canadian textile industry and the last remaining maker of textured polyester yarns in Canada. In the case of nylon, Bermatex indicated that there are only two makers left in Canada, of which it is one. It stated that the removal of the duty on cheap textured yarns from Asia is bound, once again, to reduce the profit margin on the yarns made in Canada. Bermatex maintained that its possible disappearance as the last Canadian manufacturer can only lead to higher prices for textured yarns in Canada, and what may appear to be a saving in the short term will have the opposite effect in the long term.

34. In its submission of October 31, 2005, Bermatex submitted that North American companies have more than 75 years of experience in the production of specialized high-quality nylon yarns, whereas Asian producers do not have, as yet, the experience to manufacture specialized yarns of high quality. Therefore, the basis for Liesse's request for tariff relief is not quality but price.

35. Bermatex submitted that the United States accounts for two thirds of Liesse's sales. In view of the fact that a significant amount of U.S. apparel is produced in Caribbean Basin countries, exporting fabrics composed of textured yarns made in Asia to the United States would not satisfy the provisions of the CBI, and granting tariff relief on the subject yarns would not solve this issue.

36. Bermatex submitted that, according to a recent press release, Canatex would be closing its manufacturing facility in December 2005. It suggested that, with minimal investment, Liesse could purchase Canatex's nylon texturizing machines, which, allegedly, are the best on the market. This complete integration of operations would enable Liesse not only to control the quality of its textured yarns but also to benefit from the duty-free treatment of raw materials (such as POY). This strategy would have several benefits, including: (1) avoiding a loss of revenue for the federal government and difficulties in the administration of such relief; (2) duty-free access to POY; (3) use of *NAFTA*-qualifying yarns; (4) quality control of yarns; and (5) tariff protection for Bermatex which is necessary for the survival of the company and the preservation of maximum employment in Canada.

Canatex

37. Founded in 1939, Canatex is currently the largest manufacturer of textured nylon and air-covered yarns (spandex, lycra/nylon) in Canada and offers a full range of special value-added products. Canatex also supplies dyed yarns, seaming thread, etc. It operates one plant located in Pintendre, Quebec. Canatex stated that, with a flexible manufacturing operation, it can develop many custom-made products to suit its customers' requirements. It indicated that it serves fabric knitters and weavers, including weavers of upholstery fabrics, as well as manufacturers of hosiery, intimate apparel, swimwear,¹¹ sleepwear and sportswear throughout Canada and the United States. Canatex submitted that it would be closing its manufacturing facility by the end of December 2005 and that it is currently entertaining proposals for the purchase of the building and equipment that would allow for the continuation of the operation.

38. Canatex opposed Liesse's request for tariff relief on the grounds that it could lead to its closure and that of Bermatex. It stated that the survival of the Canadian textile and apparel manufacturing industries depends on maintaining the infrastructure of supply. Canatex stated that the health of yarn producers, knitters and dyers must be maintained in order to provide the inputs required by downstream manufacture. It pointed out that yarn is critical in this process and that, if the supply chain is broken, this integrated system will, in turn, break. Canatex claimed that it has produced and continues to produce and sell yarns identical to the subject yarns. In this regard, it provided three samples of nylon yarn (single 78/68, 2-ply 78/68 and 2-ply 78/34).¹²

39. Canatex stated that the production of fabrics, including swimwear fabrics, on circular knitting machines will have the same end result of weight, texture and quality if produced on 72, 80 or 96 yarn feed machines. According to Canatex, it is the gauge of the machine, not the number of feeds, that determines the outcome of the finished fabric. Canatex stated that there are numerous knitters in Canada that have similar machines to those of Liesse and that can produce similar fabrics both for swimwear and other end products.

40. Canatex stated that to provide tariff relief on the subject yarns to Liesse on machines over 100 yarn feeds while denying it to other Canadian knitters using machines with 96 yarn feeds to produce the same fabrics is ludicrous. This would allow Liesse to have an unfair competitive advantage over other Canadian knitters. Canatex also indicated that trying to monitor who is knitting on 100 yarn feed machines versus 96 yarn feed machines or less would not be possible. In this connection, it pointed out that Liesse may have machines with fewer than 100 yarn feeds producing the same fabric and that this would require constant monitoring.

41. Canatex indicated that it has avoided dealing with Liesse because of a previous experience that did not go as anticipated. However, it stated that it was approached by Liesse in June 2005. Faced with weaker sales, Canatex decided to do business with Liesse, explaining to Liesse that this would require a team effort in order to produce yarns tailored to the company's needs. It indicated that, only a few days after receiving the yarns, Liesse returned the goods for credit, claiming that they were unacceptable and did not meet its standards. Canatex pointed out that these yarns were subsequently sold without problems to other customers.

11. Canatex could not provide commercial information on yarns sold to manufacturers of swimwear fabrics.

12. These samples were sent to the CBSA for analysis. In a letter dated October 6, 2005, the CBSA advised the Tribunal that the results obtained from the laboratory analysis indicated that the characteristics found in the nylon samples submitted by Canatex were very similar to those found in the samples provided by Liesse and that they are classified under the same classification No. 5402.31.00.29.

42. With respect to Liesse's allegations on issues of quality, Canatex stated that they are without foundation, as two Canadian and other American producers have quality standards that match and, in most cases, surpass any quality standards of yarns purchased in Asia. It stated that the issue of quality is just a smoke screen for the real and most important reason for Liesse's request for tariff relief, namely, price. Canatex also indicated that Liesse should be obliged to provide audited financial statements for the past three years, which would show that its argument for duty relief on the basis of survival is invalid.

43. Canatex indicated that the current environment regarding nylon yarns does not necessarily represent the future because, in the opinion of several industry leaders, the current artificial price of Asian suppliers is based on export initiatives, currency manipulation and a predetermined market strategy to destroy North American competition. According to Canatex, this will change with time, but, if companies such as Canatex and Bermatex are destroyed, it will be too late. Canatex also pointed out that, in order to have long-term viability in the U.S. market, one must consider *NAFTA* inputs. In this regard, it indicated that many firms currently have TPLs which encourage them to use imported yarns, but this availability is finite. Canatex believes that, when TPLs are no longer available, Liesse and other Canadian firms will not remain competitive with having to pay 15 to 20 percent duty on exports to the United States.

44. Canatex also explained that, should tariff relief be granted, this would come at the expense of jobs in the Canadian industry.

45. In its submissions of November 14 and 21, 2005, Canatex submitted that, based on Liesse's approach and reaction to Canatex's proposal to supply yarns, Liesse was never serious about using a Canadian supplier for its yarn requirements, but is only interested in obtaining tariff relief with no regard to the damage that this would inflict on Canadian suppliers of yarns. Canatex submitted that it and Bermatex have the machinery, infrastructure and knowledge to produce yarns of a quality that is as good as or better than yarns produced by any other world producer. It also submitted that, with minor adjustments to its texturing machines, it is capable of producing yarns similar to those purchased by Liesse from Unifi.

Importer and Distribution Industry

Texturon

46. Texturon is an importer and distributor of textured polyester yarns. It imports yarns from the United States and Asia and supplies the domestic knitting and weaving industries. Founded in 1971, Texturon was a texturizer of polyester filament yarns but, in August 2003, it discontinued production because of competition from imported yarns. During the same year, the company was appointed the sole distributor in Canada of textured polyester yarns for Unifi.

47. Texturon opposed Liesse's request for tariff relief on the subject yarns, since there are two Canadian manufacturers, Bermatex and Canatex, that are capable of producing and currently produce these yarns. Texturon stated that Bermatex and Canatex have the machinery and expertise to supply yarns of high quality necessary for the manufacture of swimwear fabrics. It also indicated that these yarns can be obtained from U.S. suppliers. According to Texturon, Liesse is simply trying to reduce its cost by not having to pay on the subject yarns an 8 percent duty that is in place to protect existing producers of these yarns. Texturon stated that to grant tariff relief would be tantamount to closing down Bermatex and Canatex.

OTHER INFORMATION

48. ITCan informed the Tribunal that, under the World Trade Organization (WTO) *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 yarns. Industry Canada stated that feedback from Bermatex and Canatex is critical in the assessment of Liesse's claims and in determining any negative impact on Canadian producers of textured yarns, should tariff relief be granted.

49. The CBSA indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief requested for the subject yarns described as being for "use in the manufacture of swimwear fabrics". However, it stated that an end-use provision described as "for use in the manufacture of fabrics on circular knitting machines equipped with more than 100 yarn feeds" would be difficult to administer. In this regard, the CBSA indicated that it normally reviews end-use items on a post-audit basis and that Liesse or any other importer would have to maintain an audit trail to track yarns imported under the new tariff item through the production process, ensuring that each of these yarns and 99 others would be used at the same time, on the same machine, to produce the same fabric. According to the CBSA, this would be nearly impossible to audit, especially if the circular knitting machine does not require that there be more than 100 yarn feeds in use.

ANALYSIS

50. 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, a domestic versus foreign price comparison and the availability of substitutable inputs from domestic sources. 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.

Domestic Versus Foreign Price Comparison

51. Liesse stated that, because Unifi has imposed yarn price increases without regard to the increasing pressures downstream, Liesse has placed orders of the subject yarns with Asian suppliers. The Tribunal notes that the United States accounts for two thirds of Liesse's sales of swimwear fabrics and that its U.S. customers are demanding lower fabric prices in light of quota-free swimwear imports from China. The Tribunal also notes that the landed cost¹³ of the subject yarns from Asia, which includes all duties, is significantly lower than the selling prices¹⁴ of similar yarns of domestic origin. Consequently, the Tribunal is of the view that pricing is at the core of Liesse's request for tariff relief and that, even in the absence of tariff relief, Liesse would likely not shift its purchases from the lower-priced imported yarns to those offered by Bermatex and Canatex unless the domestic yarns were offered at competitive prices. Moreover, the Tribunal notes that Bermatex has not sold similar yarns to Liesse in the past two years and that Canatex did not sell yarns to Liesse during the period of investigation.

13. Tribunal Exhibit TR-2004-001-35 (protected), Administrative Record, Vol. 2 at 45.

14. *Ibid.* at 47.

Availability of Substitutable Inputs

52. With respect to the issue of substitutability, the analysis carried out by the CBSA determined that the characteristics found in the nylon and polyester samples of textured yarns submitted by Bermatex¹⁵ and the nylon samples of textured yarns provided by Canatex¹⁶ are very similar to those found in the samples provided by Liesse and that they would be classified under the same classification numbers, i.e. Nos. 5402.31.00.29 and 5402.33.90.19. However, Liesse submitted that, although yarns of the same physical description may be available from domestic producers, they are exceptionally sensitive to the risk of barré and are not suitable for use in the production of swimwear fabrics on circular knitting machines equipped with a 122 yarn feeds. On this matter, Bermatex and Canatex responded that they are able to meet all of Liesse's quality requirements.

53. The Tribunal notes that Bermatex sold significant volumes of yarns to Liesse,¹⁷ including yarns similar to the subject yarns, during the 1999-2003 period. Moreover, Bermatex recently sold a certain amount of yarns to other companies for use in the manufacture of swimwear fabrics.¹⁸ The Tribunal also notes that Canatex provided some yarns to Liesse for testing, but that the latter found them unacceptable. Furthermore, Canatex provided some information in seeking to demonstrate that, by making minor adjustments to its texturing machines, it is capable of producing yarns similar to those purchased by Liesse from Unifi.¹⁹ This leads the Tribunal to believe that Bermatex and Canatex have the ability to serve the needs of Canadian downstream industries in the general marketplace.

54. The evidence indicates that issues of quality surrounding swimwear fabrics have prevented Liesse and domestic producers of yarns from establishing a commercially viable working relationship and that these issues remain unresolved. It is unclear as to whether these issues could be resolved in the future if Liesse worked in cooperation with domestic yarn suppliers to develop acceptable yarns. Based on the evidence, the Tribunal is unable to make a determination on the substitutability of domestic textured yarns of polyester and nylon for the imported yarns that Liesse currently uses in the production of swimwear fabrics. Further, although it is possible that domestic production could be capable of meeting Liesse's quality requirements, the Tribunal is of the view that the working relationship between the yarn producers and Liesse has not been sufficiently close to achieve a successful result for either party.

Net Economic Gains for Canada

55. The Tribunal's decision to recommend the reduction or removal of a tariff must be based on the extent to which it considers that such relief would maximize net economic gains for Canada. The Tribunal accepts Liesse's position that, in light of the importance of the increasingly competitive U.S. market to its operations, it has been forced to seek lower-priced yarns from Asian suppliers. In this context, it is evident that Liesse is up against a high degree of competition and is vulnerable to market pressures. Therefore, in this environment, Liesse cannot afford to pass on the cost of the duties on the subject yarns to its customers.

56. Bermatex, Canatex and Texturon submitted that tariff relief would come at the expense of jobs in the Canadian industry. However, as noted above, Bermatex has not sold any yarns to Liesse in the past two years and the Tribunal believes that its circumstances will not change in the immediate future, even if tariff

15. Tribunal Exhibit TR-2004-001-28A, Administrative Record, Vol. 1 at 118.2-118.6.

16. Tribunal Exhibit TR-2004-001-29A, Administrative Record, Vol. 1 at 120.2-120.6.

17. Tribunal Exhibit TR-2004-001-35 (protected), Administrative Record, Vol. 2 at 48.

18. *Ibid.* at 38.

19. Tribunal Exhibit TR-2004-001-39.2A, Administrative Record, Vol. 5 at 2.

relief were granted. The evidence also suggests that the situation will not change in the medium term. The Tribunal notes that Bermatex has sold some yarns for use in the manufacture of swimwear fabrics. These sales may very well be at risk if tariff relief is provided on the subject yarns. However, the volumes involved are very limited compared to Liesse's imports of the subject yarns. As for Canatex, it announced that it would be closing its manufacturing facility by the end of December 2005.²⁰ Therefore, Canatex will suffer no harm to its production as a result of tariff relief. With respect to Texturon's opposition to Liesse's request for tariff relief, the Tribunal notes that Texturon ceased its texturizing operation in August 2003 and is now an importer of textured polyester yarns, in particular yarn from Unifi, currently Liesse's main supplier located in the United States. However, Texturon did not provide any evidence that there would be any direct harm to it or others, should tariff relief be granted. Based on information provided by Liesse, the Tribunal estimates that tariff relief would represent significant direct net gains of over \$500,000. Potential gains were based on the rate of duty for 2006, i.e. 8 percent *ad valorem*.

57. At the outset of the inquiry, Liesse requested that two alternative end-use provisions (for use in the manufacture of swimwear fabrics or in the manufacture of fabrics on circular knitting machines equipped with more than 100 yarn feeds) be included in the proposed description of the subject yarns. Liesse indicated that the latter end use arises from the fact that the incidence and economic consequences of yarn defects increase with the number of yarn feeds on circular knitting machines. This may well be the case, but the Tribunal is not persuaded that tariff relief should be provided based on this end use. Furthermore, Bermatex's concerns with respect to Liesse's request for tariff relief were principally based on the potential harm should an end-use provision for circular knitting machines equipped with more than 100 yarn feeds or more be implemented. The Tribunal also notes that the CBSA has advised that a measure qualified in this manner would be difficult to administer. This leads the Tribunal to conclude that, in this case, any end-use provision should be limited to the manufacture of swimwear fabrics. This measure, if adopted alone, would ensure that all producers of swimwear fabrics would be treated equally and not give Liesse an unfair advantage over circular knitters using equipment with less than 100 yarn feeds. The CBSA has also indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief requested for the subject yarns described as being for "use in the manufacture of swimwear fabrics".

58. In sum, the Tribunal concludes that yarns produced by Bermatex and Canatex are, in general, similar to the subject yarns. However, the evidence is unclear as to whether Canadian yarns could be used by Liesse in the manufacture of swimwear fabrics if Bermatex or Canatex were given sufficient opportunity to develop acceptable yarns. In any event, faced with strong competition for its swimwear fabrics in the United States, its principal market, Liesse must source the subject yarns at the most competitive prices possible. On the basis of the evidence, it is clear that potential benefits to Liesse outweigh any potential costs to domestic producers of yarns. Moreover, given that such tariff relief, as recommended, centres only on fabrics used in the manufacture of swimwear fabrics, Bermatex could potentially serve the needs of Liesse for other end uses.

20. Tribunal Exhibit TR-2004-001-39.2, Administrative Record, Vol. 5 at 1.

RECOMMENDATION

59. 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 synthetic filament yarn, solely of nylon, textured, measuring per single yarn 75 decitex or more but not exceeding 200 decitex, of subheading No. 5402.31, for use in the manufacture of swimwear fabrics; and synthetic filament yarn, solely of polyester, textured, measuring per single yarn 150 decitex or more but not exceeding 200 decitex, of subheading No. 5402.33, for use in the manufacture of swimwear fabrics.

James A. Ogilvy

James A. Ogilvy
Presiding Member

Zdenek Kvarda

Zdenek Kvarda
Member

Meriel V. M. Bradford

Meriel V. M. Bradford
Member

Hélène Nadeau

Hélène Nadeau
Secretary