



**REPORT TO
THE MINISTER OF FINANCE**

**REQUESTS FOR TARIFF RELIEF BY
LES COLLECTIONS SHAN INC.
REGARDING
CERTAIN FABRICS AND LABELS**

JULY 22, 1997

LES COLLECTIONS SHAN INC.

**REQUEST NOS.: TR-96-008
TO TR-96-013**

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INTRODUCTION

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

Pursuant to the Minister's reference, the Tribunal received, on December 23, 1996, six separate requests from Les Collections Shan Inc. (Shan) of Laval, Quebec, for tariff relief. Shan subsequently asked that the requests be consolidated and that they be for the permanent removal of the customs duty, solely for its own use, on importations of: (1) the fabrics falling within the scope of the fabric groupings described in the attached appendix, to the annual quantitative limits indicated for each fabric grouping; and (2) labels, narrow woven, of a width of 3 cm or less, solely of single, multifilament yarns of polyester, with normal selvages, inscriptions or motifs produced by weaving, of tariff item No. 5807.10.10 of Schedule I to the *Customs Tariff*,³ to an annual limit of 100,000 units, for use in the manufacture of swimsuits, "co-ordinated beachwear" and "co-ordinated accessories" (the subject fabrics and labels). Shan requested that the tariff relief be retroactive to March 1, 1997.

On March 24, 1997, the Tribunal, being satisfied that the requests were properly documented, issued a notice of commencement of investigation, which was widely distributed and published in the April 5, 1997, edition of the *Canada Gazette*, Part I.⁴ On April 30, 1997, Shan asked that tariff item Nos. 5407.10.00 and 5903.20.20 be included in the fabric groupings.

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

A staff investigation report, summarizing the information received from these government departments, Shan and other interested parties, was provided to those interested parties that had filed notices of appearance for this investigation.

Following distribution of the staff investigation report, Agmont Inc. (Agmont), of Ville Saint-Laurent, Quebec, the Canadian Textiles Institute (CTI) and Shan filed submissions with the Tribunal. Pursuant to a request by Shan, the Tribunal held a public hearing on June 12, 1997, to obtain evidence and hear arguments in respect of five specific issues. These issues were:

- the "uniqueness" of Shan's situation as it relates to:
 - a) its high-fashion line; and
 - b) its *Shan Bis* line;

1. On March 20 and July 24, 1996, the Minister of Finance revised the terms of reference.

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

3. R.S.C. 1985, c. 41 (3rd Supp.).

4. Vol. 131, No. 14 at 1082.

- the substitutability of textile inputs (both fabrics and labels) made by Canadian producers with those imported by Shan;
- the market competition between Shan's finished products and the finished products produced by other Canadian manufacturers;
- the market competition between Shan's finished products and Gottex Inc.'s (Gottex) finished products, both domestically and abroad; and
- the meaning of the terms "co-ordinated beachwear" and "co-ordinated accessories."

PRODUCT INFORMATION

The subject fabrics and labels, imported mostly from Europe, are used in the manufacture of swimsuits and what has been referred to as "co-ordinated beachwear" and "co-ordinated accessories." All cutting, production, finishing and quality control of end products are performed in-house by Shan.

In 1997, most of the subject fabrics are dutiable at 17.5 percent *ad valorem* under the MFN tariff and the GPT; at 2.5 percent *ad valorem* under the US tariff; and at 15.0 percent *ad valorem* under the Mexico tariff. Under Code 4215⁵ of Schedule II to the *Customs Tariff*, certain woven fabrics of cotton are dutiable at 10.0 percent *ad valorem* under the MFN tariff and the GPT. Other fabrics, such as imitation leather, qualify for the benefits of Code 4305⁶ which attracts a 10.0 percent *ad valorem* tariff rate under the MFN tariff and a 6.5 percent *ad valorem* tariff rate under the GPT. Under the World Trade Organization tariff reduction schedule, the MFN tariff rates applicable to most of the importations of the subject fabrics in Canada will be reduced to 12.0 percent *ad valorem* or 14.0 percent *ad valorem* by the year 2004.

In 1997, the subject labels are dutiable at 20.9 percent *ad valorem* under the MFN tariff; at 19.5 percent *ad valorem* under the BPT; at 16.5 percent *ad valorem* under the Australia and New Zealand tariff; at 14.0 percent *ad valorem* under the GPT; at 2.3 percent *ad valorem* under the US tariff; and at 9.3 percent *ad valorem* under the Mexico tariff. The MFN tariff rate for the subject labels will be reduced to 14.0 percent by the year 2004.

REPRESENTATIONS

Shan

Shan has been manufacturing swimsuits, "co-ordinated beachwear" and "co-ordinated accessories" since 1985. It produces designer swimwear that sells in high-end boutiques and department stores. Shan employs 60 people and sources its fabrics and labels mostly in Italy.

5. Woven fabrics of cotton of subheading No. 5208.21, 5208.22, 5208.23, 5208.29, 5208.31, 5208.32, 5208.33, 5208.39, 5208.41, 5208.42, 5208.43, 5208.49, 5208.51, 5208.52, 5208.53, 5208.59, 5209.21, 5209.22, 5209.29, 5209.31, 5209.32, 5209.39, 5209.41, 5209.43, 5209.49, 5209.51, 5209.52 or 5209.59, for use in the manufacture of apparel or apparel accessories.

6. Imitation leather of nonwovens or of textile fabrics, containing 60 percent or more by weight of man-made fibres, valued at \$13.00/m² or more, of tariff item No. 5603.11.99, 5603.12.99, 5603.13.99, 5603.14.99, 5603.91.90, 5603.92.90, 5603.93.90, 5603.94.90 or 5903.20.20, for use in Canadian manufactures.

Shan argued that the marketing concept for its designer collections, *Shan* and *Shan Bis*, is based on five principles, namely, that: Shan: (1) requires a wide range of samples in small quantities in order to conceptualize and develop a new collection; (2) must constantly innovate and create new fashion trends; (3) requires exclusivity of fabrics; (4) can offer to its clientele “co-ordinated beachwear” in different fabrics with the same print; and (5) must have the assurance that the fabrics will be produced according to its requirements so as to meet its commitments.

Shan claimed that there are no domestic producers of identical or substitutable fabrics and labels. Shan argued that fabrics produced in Canada are not suitable for designer swimwear and accessories that it produces. Shan submitted that Canadian textile manufacturers are not interested in producing small quantities of high-quality fabrics and cannot provide exclusivity of fabrics. In this connection, Shan indicated that Canadian suppliers require minimum orders of 500 linear metres, whereas the choice of European samples alone can confer exclusivity and subsequent orders of 10 to 50 metres can be placed for production of samples, and of 35 metres or increments of 35 metres, for production runs.

Shan stated that while domestic textile producers offer a limited range of fabrics, textile producers in Europe produce a significantly wider variety of high-quality fabrics, including different fabrics with the same design and pattern.

Shan also argued that, because of the *Canada-Israel Free Trade Agreement*⁷ (CIFTA), it is disadvantaged vis-à-vis imports of finished products. Shan stated that its main rival, Gottex, of Israel, buys fabrics in Europe duty-free under a free trade agreement between Europe and Israel and produces high-end products that compete directly with Shan’s swimsuits and “co-ordinated beachwear.” This, according to Shan, has had a negative impact on its ability to compete in the domestic market and, as a result, Shan has lost sales. Shan also pointed out that the elimination of full duty drawback on inputs not subject to the *North American Free Trade Agreement*⁸ has hurt Shan on its export sales to the United States. Shan submitted that Gottex benefits from duty-free entry into the United States of women’s swimsuits and swimsuit pieces from Israel made from European fabrics pursuant to the *United States-Israel Free Trade Agreement*.⁹

Shan submitted that although the price of its recently introduced, more affordable line of swimsuits, *Shan Bis*, may, on some occasions, approach the price of high-end swimwear produced by other Canadian manufacturers, Shan’s market niche and customer base are totally different from those of the other Canadian manufacturers, given that it is a designer and produces a unique product. In this context, it stated that there is now a worldwide trend to make high-end designer products more affordable and, since Shan is a trendsetter, it must offer a high-end product at a lower price than that of the swimsuits in its main collection. It also indicated that Gottex has introduced a lower-priced line of swimwear, Gottex *Silver* label, to complement its *Gold* line. Shan stated that its main objective is to compete with imports of swimwear from Israel and to be more competitive in the high-end designer market abroad.

7. Assented to December 18, 1996, and came into force on January 1, 1997.

8. Done at Ottawa, Ontario, on December 11 and 17, 1992, at Mexico, D.F., on December 14 and 17, 1992, and at Washington, D.C., on December 8 and 17, 1992 (in force for Canada on January 1, 1994).

9. Signed at Washington, D.C., on April 22, 1985, and came into force on August 19, 1985.

With respect to domestic textile producers that oppose Shan's requests for tariff relief because they supply apparel manufacturers with fabrics in order to produce pants, shorts, wraps, cover-ups, handbags, etc., falling within the scope of "co-ordinated beachwear" and "co-ordinated accessories," Shan argued that it does not manufacture "apparel" in the sense of apparel produced by domestic apparel manufacturers. Furthermore, Shan would lose its worldwide recognition if it attempted to mass produce such items. Shan further submitted that the use of the terms "co-ordinated beachwear" and "co-ordinated accessories," within the context of a remission order, would not create an administrative burden.

In order to address industry concerns and provide adequate protection for domestic producers of fabrics, Shan requested company-specific tariff relief on all of its importations of fabrics and labels. It also proposed quantitative limits for importations of fabrics, starting at a base level and increasing thereafter by annual increments of 30 percent over a five-year period. With respect to labels, Shan proposed an annual quantitative limit of 100,000 units. Because fashion trends change quickly and because Shan's purchases cover a wide range and a small volume of high-priced inputs, Shan argued that tariff relief as requested would eliminate the administrative burden of making recurrent requests to the Tribunal. Shan further submitted that tariff relief would enable it to price its swimsuits and accessories competitively with those imported from Israel, and that this would enhance its export opportunities.

In sum, Shan argued that: (1) it produces high-quality designer swimwear made of expensive and specially designed fabrics; (2) in order to respond to the needs of its customer base, Shan requires certain types of fabrics, on an exclusive basis, in small quantities and on short notice; (3) Canadian suppliers are not capable of producing small quantities of high-quality fabrics nor do they offer exclusivity of fabrics on the basis of samples; (4) tariff relief is required to counter the effects of CIFTA and enhance its export opportunities; and (5) the proposed annual quantitative limits will provide adequate protection for domestic producers of fabrics and labels.

Users of the Subject Fabrics and Labels

Christina Canada Inc. (Christina), of Montréal, Quebec, was formed in 1952 and is Canada's largest manufacturer of women's and children's swimsuits. It produces approximately 2.5 million swimsuits annually. Christina stated that European knit fabrics are of higher quality and are available in a wider range of designs, whereas fabrics produced in Canada do not offer consistent quality and up-to-date prints and designs. Christina also pointed out that domestic suppliers, with the exception of Tricots Liesse (1983) Inc. (Tricots Liesse), of Ville Saint-Laurent, are slow to innovate and to follow European trends, which are in great demand in Canada.

Christina opposed Shan's requests as formulated. Christina argued that its swimsuits are made with fabrics similar to those of the swimsuits produced by Shan and are sold in the same retail outlets. Christina pointed out that Shan is in the process of developing a lower-priced swimsuit line which will compete directly with Christina's product. It submitted that, should tariff relief be granted, Shan would be able to produce high-end swimwear at a cost which is comparable to Christina's cost of production. This, in Christina's view, would negate any advantages it has, based on volume. Christina also mentioned that it intends to produce a high-end line of swimsuits. For the foregoing reasons, Christina requested that, if tariff relief were to be recommended by the Tribunal, it should also extend to Christina. Christina further noted that the annual quantitative limits requested by Shan for each fabric grouping far exceed Shan's current production requirements.

BC Garment Factory Ltd. (BC Garment), of Vancouver, British Columbia, has been manufacturing knitted garments (tops, bottoms, skirts, dresses and fleece tops) for export to the United States since 1994. Although BC Garment does not produce swimwear, it supported Shan's requests for tariff relief, particularly the request pertaining to woven labels. BC Garment imports a large quantity of labels from Hong Kong and the United States and is of the view that, if tariff relief were to be recommended more broadly than simply in respect of importations by Shan, BC Garment's pricing of its own products, and of domestic garment manufacturers more generally, would be more competitive.

Linda Lundström Ltd. (Lundström), of Toronto, Ontario, a manufacturer of parkas, dresses, blazers, pants, tops and skirts, stated that it does not use the subject fabrics in the manufacture of swimsuits, but uses a fabric¹⁰ similar to one included among the subject fabrics in order to make motifs for its parkas. Although Lundström pointed out that tariff relief could be of some value to Shan, Lundström indicated that it would be of little benefit to others. Lundström opposed the request for tariff relief with respect to labels since they can be easily purchased in Canada.

Mon Sheri Clothing (Mon Sheri), of Calgary, Alberta, stated that it is about to relaunch a line of swimwear and that its costs of importing fabrics from Italy would be greatly reduced should tariff relief also be granted in respect of Mon Sheri. According to Mon Sheri, this would enhance its ability to compete and allow it to further expand.

Simply Best Swim & Activewear (Simply Best), of Edmonton, Alberta, is a manufacturer of swimsuits and activewear. Simply Best stated that domestic producers do not offer a wide range of fabrics and require minimum orders. Simply Best submitted that tariff relief should not be granted solely to Shan, but to all firms interested in importing the subject fabrics.

C.J. Grenier Ltée (Grenier), of Montréal, a Canadian producer of women's high-end swimwear, did not make a formal submission to the Tribunal. However, it stated that granting the tariff relief as requested would give Shan an unfair competitive advantage. Grenier submitted that the tariff relief should apply to all Canadian manufacturers of swimsuits.¹¹

Domestic Producers of Allegedly Identical or Substitutable Fabrics and Labels

Agmont has been manufacturing circular knitted fabrics for 30 years. Agmont stated that it operates a state-of-the-art knitting factory and that it established, in 1994, the most advanced dyeing and finishing plant for knitted fabrics in North America. Agmont produces cotton, polycotton, cotton/lycra and specialty blend knitted fabrics for the swimwear, body wear, sportswear and lingerie markets.

Agmont, which also represented the Canadian Circular Knitters' Association, opposed Shan's requests for tariff relief because: (1) it produces a broad range of identical or substitutable fabrics¹² of high quality that meet Shan's requirements; (2) the range of fabrics that Agmont produces is constantly changing in order to reflect the needs of the marketplace; (3) wet printing is available from Canadian and US companies; (4) it sells fabrics that compete directly with those specified in Shan's requests to other Canadian manufacturers of swimsuits and "co-ordinated beachwear"; (5) Shan produces the same types of

10. Tribunal Exhibit TR-96-011-3 (physical), Administrative Record.

11. Tribunal Exhibit TR-96-008-56, Administrative Record, Vol. 1.

12. Those specified under subheading No. 6002.30 and tariff item Nos. 6002.92.90 and 6002.93.00.

garments as Agmont's customers; and (6) Shan has not differentiated itself from Agmont's customer base in order to substantiate its request for company-specific relief, especially since Shan has announced its intention to produce and sell swimwear at a lower price point in the future.

With respect to CIFTA, Agmont submitted that Shan's competitive position is no different than that of any other Canadian apparel manufacturer and that Shan's concerns have been addressed by a phaseout of the customs duty on importations of swimwear from Israel, unlike the customs duties on all other garments from Israel, which were reduced to zero upon CIFTA coming into effect. With respect to Shan's assertion that its sales have declined, Agmont argued that this cannot be attributed to imports of women's and girls' swimwear from Israel, because these have decreased by 50 percent since 1993.

Agmont indicated that, because fashion swings dictate which fabrics will be used in garments, retail prices can vary significantly from one season to the next or from one year to another. Agmont noted that recent consumer trends have been toward higher-priced, better-quality garments. In this context, Agmont argued that, if tariff relief were granted for Shan only, the sales of other Canadian swimwear manufacturers, as well as their suppliers, would suffer.

Should tariff relief be granted, Agmont was of the view that Shan would be in a position to use a 100,000 m² quantitative limit for imports of knitted fabrics to produce swimsuits for any price range, in competition with other Canadian manufacturers. Furthermore, granting tariff relief would be discriminatory in that other swimwear manufacturers purchase fabrics domestically or pay duty on importations of fabrics. In addition, Agmont stated that Canadian knitters have made significant investments in order to produce the highest-quality fabrics at competitive prices for Canadian manufacturers of swimwear and that granting tariff relief would undermine these efforts.

Consoltex Inc. (Consoltex), of Ville Saint-Laurent, is the largest Canadian producer of woven man-made fabrics. It produces nylon, polyester, polycotton, poly/nylon, poly/rayon, nylon/cotton, acetate/rayon and other blends for the apparel market, including the swimwear and beachwear markets, as well as for the household, industrial and non-apparel markets. Consoltex stated that the swimwear industries in Canada, the United States, Australia and Europe all purchase nylon, polyester, polycotton and poly/nylon fabrics from Consoltex.

Consoltex opposed Shan's requests for tariff relief because: (1) if Shan's import competition is from high-quality swimsuits made of expensive, exclusive, specially designed fabrics, the scope of the investigation should reflect this situation; (2) the fabric groupings concerning woven fabrics are too broad and cover 100 percent of Consoltex's production; (3) Consoltex currently sells 25 major products to producers of swimsuits, and, arguably, producers of "beachwear co-ordinates" and "beachwear accessories"; and (4) these sales are growing. Therefore, Shan's requests put Consoltex's sales at increased risk.

Consoltex submitted that Revenue Canada will not be able to administer the terms "co-ordinated beachwear" and "co-ordinated accessories" since they are too vague. Consoltex argued that the Tribunal must clearly define the exact fabrics used by Shan, the exact products manufactured by Shan and the exact market price range Shan is targeting.

Dominion Industrial Fabrics Company (DIFCO), of Montréal, stated that it produces cotton, cotton blend and man-made staple fibre fabrics covered by the Tribunal's notice of commencement of investigation. DIFCO pointed out that the plant where these fabrics are produced is located in Magog, Quebec, and employs about 600 people.

DIFCO opposed Shan's requests for tariff relief because: (1) it produces identical or substitutable fabrics; (2) it supplies apparel manufacturers that make garments (e.g. pants, shorts, wraps and cover-ups) arguably within the scope of "co-ordinated beachwear"; (3) the "uniqueness" of Shan's product has not been substantiated by Shan; and (4) should tariff relief be granted, this will have a negative impact on DIFCO and the textile industry in general, and set an unacceptable precedent for future requests for tariff relief.

Doubletex of Montréal, stated that it produces and sells a broad range of woven fabrics to apparel manufacturers that make garments (e.g. skirts, shorts, pants and cover-ups) arguably within the scope of "co-ordinated beachwear." Doubletex opposed Shan's requests, particularly the request concerning voile fabrics, because it currently produces such fabrics on an exclusive basis for a customer which makes beach cover-ups that sell in the same price range as those produced by Shan. Doubletex argued that, if tariff relief were granted on voile fabrics, other companies might seek the same relief. Under this scenario, Doubletex stated that it would either be forced to reduce its prices or lose business to imported fabrics.

Gentry Knitting Mills Limited (Gentry), of Scarborough, Ontario, a manufacturer of dyed and finished knit fabrics, opposed Shan's requests for tariff relief because it stated that it has the capability and technology to produce identical or substitutable fabrics¹³ of high quality that would meet Shan's and other customers' requirements.

George Hancock Textiles Limited (Hancock), of Cambridge, Ontario, has been manufacturing woven labels, other woven products, such as badges, patches, trimmings and zipper pulls, and nonwoven products (e.g. printed labels and leather patches) since 1912. Hancock produces 192 million labels annually. Hancock opposed Shan's request with respect to labels because it is an industry leader in the design and manufacture of woven labels and is always interested in developing new business relationships, regardless of the quantity of labels required.

Hafner Inc. (Hafner), of Granby, Quebec, a manufacturer of warp-knit fabrics since 1954, employs 400 people. Hafner stated that it produces knitted fabrics for use in the manufacture of swimsuits, basic garments, sportswear and upholstered furniture. The swimsuit market represents a significant portion of Hafner's production, sales and gross profit.

Hafner opposed Shan's requests for tariff relief because: (1) it produces a broad range of identical or substitutable knitted fabrics,¹⁴ with or without spandex, and sells these fabrics for various end uses, including the manufacture of swimsuits; (2) the swimsuit market represents 80 percent of Hafner's sales of knitted fabrics; (3) although Shan specializes in quality, high-end swimsuits, nothing would prevent Shan from producing swimsuits at other price points, thereby competing directly with Hafner's customers; and (4) should tariff relief be granted, it would have a negative impact on Hafner and its customers.

Hafner also stated that Shan sells its swimsuits at a lower price than Gottex and that, in the future, Shan will likely produce cheaper swimsuits. Hafner submitted that, should tariff relief be granted, its customers will become less competitive and either demand lower prices for domestically produced fabrics or switch to imports.

13. Those specified under subheading No. 6002.30 and tariff item Nos. 6002.92.90 and 6002.93.00.

14. Those specified under subheading Nos. 6002.30, 6002.42 and 6002.43.

LaGran Canada Inc. (LaGran), of Lachine, Quebec, stated that it makes certain fabrics identical to or substitutable for the subject fabrics. LaGran urged the Tribunal to deny Shan's requests for tariff relief because: (1) it hopes to sell identical or substitutable fabrics to swimwear manufacturers in the near future; (2) it sells fabrics to apparel manufacturers that make garments (e.g. pants, shorts, wraps and cover-ups) falling within the scope of "co-ordinated beachwear"; (3) the "uniqueness" of Shan's product has not been substantiated by Shan; and (4) a recommendation for tariff relief as requested by Shan would have a negative impact on LaGran and the textile industry in general, and set an unacceptable precedent for future requests for tariff relief.

Manoir Knitting Inc. (Manoir), of Montréal, opposed Shan's requests for tariff relief because: (1) it produces knitted fabrics¹⁵ that fall within certain tariff classifications described in the Tribunal's notice of commencement of investigation and has the capability to produce a fabric identical to or substitutable for the single weft-knit fabric knitted from yarns of different colours that Shan filed as a physical exhibit;¹⁶ (2) in 1996, it sold fabrics to apparel manufacturers that make garments (e.g. pants, shorts, wraps and cover-ups) falling within the scope of "co-ordinated beachwear," which compete with Shan's garments; (3) the "uniqueness" of Shan's product has not been substantiated by Shan since most apparel manufacturers produce fashion and "designer" garments using unique fabrics; and (4) should tariff relief be granted, it will have a negative impact on Manoir and the textile industry in general, and set an unacceptable precedent for future requests for tariff relief.

Monterey Textiles inc. 1996 (Monterey), of Drummondville, Quebec, employs 80 people and produces acetate filament and polyester filament fabrics that fall within the description of the subject fabrics. Monterey also indicated that it produces fabrics used to make woven labels. Monterey pointed out that, although it presently produces fabrics of 100 percent acetate used to produce labels, it is also capable of producing 100 percent polyester fabrics suitable for use as labels. Monterey argued that polyester and acetate labels compete in the same market. Although Monterey stated that Shan's purchases of labels are small and would not represent significant fabric sales potential for Monterey, it questioned whether tariff relief on labels would make any difference with respect to Shan's ability to compete with swimwear imported from Israel. Monterey claimed that labels are readily available from Canadian and US producers.

Nalpac, of Montréal, a major producer of lace, warp-knit fabrics and circular-knit fabrics since 1941, employs 396 people at two plants located in Montréal and Longueuil, Quebec. Nalpac generates half of its business from exports.

Nalpac alleged that it will be negatively affected by a positive recommendation for tariff relief. In this context, Nalpac opposed Shan's requests for tariff relief because: (1) it produces knitted fabrics, woven fabrics of cotton, woven fabrics of man-made filaments and man-made staple fibres, and tulle; (2) during the past few years, it has invested several million dollars in new plant equipment which has enabled Nalpac to grow, particularly in the export market, and to offer a wide range of new, high-quality fabrics at competitive prices; (3) in order to remain competitive, Nalpac must maintain its market share; and (4) Revenue Canada will not be able to identify fabrics used in the manufacture of swimsuits and "co-ordinated beachwear" since these fabrics are also used in the production of a wide assortment of other garments.

15. Those specified under subheading No. 6002.30 and tariff item Nos. 6002.92.90 and 6002.93.00.

16. Tribunal Exhibit TR-96-012-3 (physical), Administrative Record.

Nalpac stated that it has done business with Shan and that it currently supplies fabrics to Shan's competitors, namely, Gottex, Steven Gellis Sport, Victoria Secrets, Marks & Spencer, Bali and Sabrina, and that these companies are satisfied customers. Nalpac acknowledged that it cannot give exclusivity of fabrics on orders of 50 metres to 70 metres, but pointed out that it has developed innovative fabrics. With respect to Shan's introduction of its *Shan Bis* line, Nalpac stated that Shan will not only be in competition with Gottex with this product line but will also be in competition with other manufacturers of women's swimwear, both Canadian and foreign.

Rentex Inc. (Rentex) of Montréal, stated that it makes certain knitted fabrics identical to or substitutable for those falling within the scope of the Tribunal's investigation. Rentex stated that it does not sell fabrics to Shan, but that it sells crotch pad lining and bra mold covering to other swimwear manufacturers.

Rentex opposed Shan's requests for tariff relief because: (1) it and other producers in Canada make identical or substitutable fabrics; (2) it sells fabrics to apparel manufacturers that make garments (e.g. pants, shorts, wraps and cover-ups) falling arguably within the scope of "co-ordinated beachwear"; (3) the "uniqueness" of Shan's product has not been substantiated by Shan; and (4) should tariff relief be granted, it would have a negative impact on Rentex and the textile industry in general, as well as set an unacceptable precedent for future requests for tariff relief.

Texel Inc. (Texel), of Saint-Elzéar, Quebec, a manufacturer of nonwovens and needle-punched fabrics, indicated that it does not oppose Shan's request respecting nonwovens as long as tariff relief is limited to nonwovens consisting of a blend of 65 percent polyurethane and 35 percent nylon, weighing not less than 70 g/m² but not more than 150 g/m², for use in the production of swimsuits and "co-ordinated garments."

The Britex Group (Britex), of Bridgetown, Nova Scotia, a producer of narrow woven fabrics, the majority of which fall within the scope of subheading No. 5806.02, employs 160 people. Britex opposed Shan's requests for tariff relief because: (1) it currently offers over 500 different styles of narrow woven fabrics to apparel manufacturers; (2) it has consistently demonstrated an ability to design and produce fabrics that meet specific requirements; (3) the "uniqueness" of Shan's product with respect to narrow woven elastic fabrics has not been substantiated by Shan; and (4) should tariff relief be granted, this would have a negative impact on Britex and the textile industry in general, and set an unacceptable precedent for future requests for tariff relief.

Tricots Canada U.S. Inc. (Tricots Canada) is a producer of a wide range of fabrics (e.g. jerseys, fleeces, ribs, interlocks, thermals and terries) covered by tariff item No. 6002.92.90, located in Saint-Hyacinthe, Quebec. It employs 135 people. Tricots Canada stated that it currently does not sell to Shan or to other manufacturers of swimwear, but intends to approach them with a wide range of cotton ribs. Tricots Canada submitted that granting tariff relief on all of Shan's imported textile inputs, especially those used to produce "co-ordinated beachwear," will have a negative impact on its sales because Tricots Canada supplies fabrics to apparel manufacturers that compete directly with garments produced by Shan. Granting duty-free entry to all of Shan's imported fabrics and labels would, according to Tricots Canada, set an unacceptable precedent for future requests for tariff relief.

Tricots Liesse makes cotton, polycotton, lycra, poly/tactel and specialty blend knitted fabrics for use in the manufacture of swimwear, sportswear, casual wear, intimate wear and children's wear. Tricots Liesse opposed Shan's requests for tariff relief because: (1) it has the capability to produce identical or substitutable fabrics that will meet Shan's requirements; (2) some of the knitted fabrics under investigation represent 100 percent of Tricots Liesse's production, sales and employment; and (3) Tricots Liesse sells similar fabrics to other Canadian manufacturers of swimwear and beachwear, thereby showing that its fabrics are in direct competition with the subject fabrics.

Tricots Liesse also stated that US manufacturers of swimsuits, which compete with Israeli manufacturers of swimsuits, buy its fabrics. Tricots Liesse indicated that, if tariff relief were granted, other Canadian companies would seek the same treatment, thereby causing Tricots Liesse's sales of fabrics to decline.

Other Submissions

The **CTI** objected to the scope of Shan's requests as presented. It submitted that the fabric groupings are too broad because they cover 177 tariff items representing \$1.2 billion of imports, and that Shan has only imported fabrics under less than two dozen of these tariff items. The CTI also pointed out that Shan's request of April 30, 1997, to broaden the scope of the investigation to include tariff item Nos. 5407.10.00 and 5903.20.20 is procedurally unacceptable. The CTI argued that there is no basis for the Tribunal to consider tariff relief on all of Shan's current and future importations of textile inputs, since Shan has presented supporting information and samples for only 6 of the 19 major fabric groupings outlined in the Tribunal's notice of commencement of investigation. In this connection, the CTI indicated that Shan should be held to the same standard of evidence which is applied to domestic textile producers.

The CTI argued that, in the past, requests for tariff relief have been for specific textile inputs for specific end uses, allowing all interested parties to properly evaluate the potential impact of granting the tariff relief and that Shan's requests are a departure from the standard. The CTI submitted that the end use for the subject fabrics should be redefined to reflect women's swimsuits only because Shan has no standing to request tariff relief on textile inputs for use in categories of apparel that it does not make. The CTI indicated that Shan had not referenced all of its end uses (e.g. accessories, shorts and skirts) by tariff item and that Revenue Canada would have serious difficulties administering the terms "co-ordinated beachwear" and "co-ordinated accessories."

The CTI noted that the volume of women's and girls' swimwear importations from Israel has declined over the 1992-96 period and that importations dropped by 30 percent in the first three months of 1997 compared to the same period a year earlier. The CTI indicated that Israeli imports of swimwear into the United States have also declined since 1992 and that the percentage share held by Israel of total US importations of women's and girls' swimsuits has fallen from 5.1 percent in 1992 to 2.3 percent in 1996. This, according to the CTI, does not support Shan's apprehensions concerning the impact of CIFTA. The CTI also submitted that the competition between Shan and Gottex would not seem to be as direct because the two companies serve different groups of consumers in the high-end market.

The CTI pointed out that, contrary to Shan's allegation, CIFTA rules of origin for swimwear would not allow swimsuits produced in Turkey and exported from Israel to qualify for duty-free entry. Moreover, the CTI indicated that the "cutting process only" would not qualify goods for US-Israel free trade benefits, as

alleged by Shan.¹⁷ If Gottex is manufacturing swimsuits in the United States using imported European fabrics, the CTI noted that Gottex is required to pay duty on the fabric inputs. The CTI also pointed out that the Canadian duty on most fabrics will decline to 16 percent or less in 1998 and that some fabrics are dutiable at even lower rates. With respect to Shan's reference to the availability of small sampling orders from its European sources, the CTI argued that it is appropriate for tariffs to apply to import shipment of all sizes.

As for the quantitative limits on importations of fabrics and labels qualifying for tariff relief, as proposed by Shan, the CTI argued that these volumes are inflated and far exceed Shan's current usage of imported fabrics and labels. With these inflated volumes, and with no restrictions on the end use, the CTI submitted that domestic producers of fabrics and swimwear would be placed in jeopardy. Should the Tribunal recommend company-specific tariff relief, the CTI argued that quantitative limits be set at levels not significantly higher than Shan's performance in 1996.

The CTI submitted that there is evidence on the record to indicate that Canadian textile producers supply swimwear producers at every level of the market. The CTI argued that, with Shan's introduction of a new line of swimwear, *Shan Bis*, which sells at lower price points not previously occupied by Shan, Shan is expanding its product range in areas of direct competition with other Canadian producers of swimwear. The CTI argued that a "for Shan only" restriction is not a sufficient safeguard to protect other swimwear producers and their fabric suppliers. In this context, the CTI indicated that any duty-free privilege created for the highest price producer must be restricted by a price parameter to differentiate very high-end products from those which are currently produced and sold by other Canadian manufacturers. The CTI further submitted that the end-use provision should not extend below the wholesale prices of Shan's product line in 1996.

The CTI also argued that the tariff relief should not be extended to other companies, as this could be potentially devastating for the textile industry and its customers.

While acknowledging that many imported fabrics covered by this investigation are not available in Canada and that manufacturers should not have to pay duties on these goods, the **Canadian Apparel Manufacturers Institute (CAMI)** opposed Shan's requests for tariff relief in their present form for the following reasons: (1) the scope of the requests is too broad; (2) the quantitative limits specified in the requests are well above Shan's current production requirements and are, therefore, a *de facto* admission that Shan intends to expand dramatically into lower-price ranges or into other product categories; (3) with the introduction of the *Shan Bis* line and the move by other Canadian manufacturers to introduce higher-priced lines, there will be an overlap in product offerings and direct competition between Shan and other swimwear producers; and (4) because the terms "co-ordinated beachwear" and "co-ordinated accessories" are difficult to define and administer, tariff relief would enable Shan to expand its business into product categories which it does not currently serve, but which are well served by other Canadian producers.

CAMI argued that to give exclusive company-specific tariff relief to Shan would be unfair since it would likely yield no net benefit to Canada, but simply cause a shift in market shares among domestic manufacturers. In addition, CAMI argued that it would become very difficult for any other company to expand into market niches currently served by Shan.

17. CTI's submission dated June 11, 1997.

CAMI submitted that, should the Tribunal conclude that certain fabrics are not commercially available in Canada, tariff relief should be available to any company importing the subject fabrics for use in the manufacture of apparel in Canada. In this connection, CAMI asked the Tribunal to vary the remedy requested by Shan to: (1) provide for an annex code allowing for a general reduction of Canadian tariffs on fabrics for use in the manufacture of swimsuits, “co-ordinates” and “accessories,” to rates not exceeding comparable US rates; and (2) eliminate tariffs on fabrics meeting certain descriptions and values (minimum price points) and not found to be available from Canadian producers. This, according to CAMI, would offset the elimination of duty drawback for all producers which export finished goods to the United States.

Northcott Silk Inc. (Northcott), of Woodbridge, Ontario, is a long-time importer/convertor of textile fabrics for the garment industry. Although Northcott does not sell fabrics to the swimwear industry, it supported Shan’s requests and stated that all duties should be removed on the subject fabrics since there are no identical or substitutable fabrics available from domestic producers. This, according to Northcott, would: (1) make the garment industry more competitive vis-à-vis importations of apparel; (2) keep more workers employed in Canada; and (3) expand export opportunities.

Above Sea Level Inc. (Above Sea), of Toronto, Ontario, an importer of swimwear, indicated that granting Shan preferential treatment violates the principle of free trade.

The **Department of Foreign Affairs and International Trade** informed the Tribunal that Canada maintains quota restraints on certain woven fabrics imported from various countries.

Revenue Canada has indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief requested for those subject fabrics and labels specifically submitted with the requests, should it be granted. However, Revenue Canada expressed the following concerns should tariff relief be granted on the basis of the wording contained in the notice of commencement of investigation:

1. Quantitative limits cannot be monitored when used in an annex code; this must be done by way of duty remission.
2. Revenue Canada cannot administer the terms “co-ordinated beachwear” and “co-ordinated accessories”; the term, “co-ordinated” is too subjective; the term, “accessories” is too vague and is not defined in the *Customs Tariff*. Moreover, many of the goods shown in Shan’s literature are high-fashion garments and would not be considered “beachwear” or “accessories.”

Should a favourable recommendation be made by the Tribunal, Revenue Canada recommended that tariff relief be granted by way of a remission order for a specific company or companies, with or without quantitative limits, or that the end use be limited to swimsuits and specific garments related to beachwear.

ANALYSIS

The Minister’s terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff and, in doing so, to take into account all relevant factors. The Tribunal’s decision to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

The requests for tariff relief by Shan are unusual in at least three respects compared to other requests for tariff relief received by the Tribunal. First, the requests are for a broad range of fabrics. Second, the requests are for company-specific tariff relief and, third, the end-use designations include “co-ordinated” products. The main argument put forward to substantiate the form of Shan’s requests for tariff relief is that Shan is unique in Canada as a designer and manufacturer of high-end women’s swimwear, and “co-ordinated beachwear” and “co-ordinated accessories.” Therefore, Shan’s requirements for fabrics to produce its collections are unique and require special consideration in terms of tariff relief. In order to compete in this market niche, it requires small volumes of high-quality wet print fabrics, with similar or complimentary patterns, high-quality plain fabrics in a wide range of colours and exclusivity of fabrics, including at the sampling stage.

The Tribunal was persuaded by the evidence that Shan does occupy a unique position within the Canadian women’s swimwear industry. Indeed, Shan is using high-quality fabrics from Europe to produce trendsetting swimsuits for a clientele that wants a sophisticated product created by a designer that has established its reputation in fashion circles.¹⁸ The witnesses for the retail trade stated that Shan’s swimsuits, in the high-end segment forming part of its “classic” collection, usually sell for between \$125 and \$200 while “co-ordinated beachwear” sells for at least \$200.¹⁹ With respect to swimsuits, the witnesses for the retail industry acknowledged that Shan does not compete with other Canadian manufacturers, but with imported finished products such as Gottex’s *Gold* label collection. Although Shan sells some swimsuits among its “classic” collection at a retail selling price of \$90, these swimsuits would not be in direct competition with those of other Canadian manufacturers.²⁰ Generally, these swimsuits are made of less material and in a solid colour, and account for only about 5 percent of Shan’s “classic” collection.²¹ For the most part, they are bikinis which, by definition, are made of a small quantity of fabric, and sell to a different clientele than offerings by other Canadian manufacturers at the same price point, which tend to be one-piece swimsuits.²²

Although swimsuits in the *Shan Bis* line are less expensive than those offered as part of Shan’s “classic” collection and may, occasionally, approach the price of swimwear produced by other Canadian manufacturers, the Tribunal accepts the testimony of Shan’s witnesses, supported by the testimony of witnesses for the retail industry, that the *Shan Bis* line occupies a market niche with a customer base different from other domestic women’s swimwear producers. The Tribunal notes that the *Shan Bis* line essentially consists of the same designs and fabrics as those of Shan’s “classic” collection, but that its making is of a somewhat lesser quality. The *Shan Bis* collection is intended to compete principally with Gottex’s *Silver* label collection.

The Tribunal also notes that Shan’s uniqueness extends to its “co-ordinated beachwear” and “co-ordinated accessories,” which include cover-ups, wraps, handbags and other accessories manufactured largely with similar prints to those used to produce the swimsuits with which they are intended to be sold. This point was made specifically in respect of “beachwear co-ordinates” by the witness for Bikini Village,

18. Shan has documented sales to high-end retailers such as Saks Fifth Avenue (New York) and Le Printemps (Paris).

19. *Transcript of Public Hearing*, June 12, 1997, at 14-15 and 41.

20. *Ibid.* at 56-57.

21. *Ibid.* at 103-4.

22. *Ibid.*

who stated that these “co-ordinates” of Shan’s are distinct from those of other manufacturers because of their style, colours, fabrics and prints.²³

The Tribunal believes that Shan’s unique position in the domestic swimwear industry is a critical factor in determining whether there are domestically produced substitutable fabrics and whether domestic producers have the ability to serve Shan’s needs. There may be domestically produced fabrics that are technically substitutable for some of the fabrics for which Shan has requested tariff relief, such as plain fabrics in solid colours, but, for the most part, domestic producers do not appear to produce the variety and quality of fabrics and prints required by Shan. In addition, it would appear that there are no Canadian producers that can supply fabrics for both swimsuits and “co-ordinated beachwear,” a condition that is of great import if a supplier wishes to sell to Shan. Furthermore, although some domestic textile producers stated that they had the potential to produce identical or substitutable fabrics, the Tribunal gives little weight to such assertions in the absence of offers to supply specific fabrics in small volumes and on an exclusive basis.

The Tribunal also notes that, in general, the landed prices of knitted and woven fabrics used by Shan are notably higher than the prices of domestic fabrics.²⁴ Furthermore, the end products produced from the subject fabrics, in particular, Shan’s “classic” line, command a considerably higher price than swimsuits made from domestically produced fabrics. In the Tribunal’s view, these price differences support the argument that the subject fabrics are of a higher quality than the quality offered by domestic textile producers and that domestic fabrics are not directly substitutable for the subject fabrics for Shan’s product lines.

As an innovative designer and trendsetter, Shan is constantly searching for new and fashionable fabrics. It, therefore, requires exclusivity of fabrics at the sampling stage and small volumes which the domestic textile industry is unable to provide. Furthermore, Shan requires high-quality wet prints, as well as the same pattern to be printed on different fabrics, which domestic textile producers are unable to offer. Although there is conflicting evidence on the record in respect of the availability of wet-printing in Canada, the Tribunal considers that, even if such printed fabrics were available in Canada, these would likely not meet Shan’s specific requirements in terms of small volumes, a wide variety of fabrics, different fabrics with similar or complimentary patterns and exclusivity.

In the Tribunal’s view, as a leader in the design of women’s high-end swimwear and “co-ordinated beachwear” and “co-ordinated accessories,” Shan should be afforded the opportunity to become more competitive with duty-free access to fabrics which are not available to it from Canadian textile producers. In this regard, a reduction in costs through tariff relief would allow Shan to improve its financial position and advance its relative competitive position vis-à-vis its competitors. Although there is some evidence on the record²⁵ indicating that Israeli imports of swimwear in Canada and the United States have declined in recent years,²⁶ it is clear that Gottex, Shan’s main rival, has access to duty-free fabrics in Europe and produces

23. *Ibid.* at 67-68.

24. *Protected Staff Investigation Report*, May 15, 1997, Tribunal Exhibit TR-96-008-58 (protected) at 16, Administrative Record, Vol. 2.

25. *Public Staff Investigation Report*, May 15, 1997, Tribunal Exhibit TR-96-008-57 at 21, Administrative Record, Vol. 1; and Tribunal Exhibit TR-96-008-40 at 8, Administrative Record, Vol. 7.

26. On the other hand, Shan provided information published by Gottex that would indicate that exports of Gottex products are growing worldwide.

high-end products that compete directly with Shan's swimsuits and "co-ordinated beachwear" in the Canadian and US markets.²⁷ By granting tariff relief to Shan, the Tribunal is of the view that this will create a level playing field for Shan in the domestic designer swimwear market as well as enhance its export opportunities.

Some domestic producers of swimwear, as well as CAMI, indicated their opposition to a recommendation for company-specific tariff relief. Their position stems largely from the view that company-specific relief would be unfair to other domestic users of similar fabrics. The Tribunal first notes that the Minister's terms of reference contemplate company-specific relief. Second, the Tribunal believes that, in this case, company-specific relief is appropriate because Shan occupies a unique position within the Canadian women's swimwear industry. While there may be some domestic swimwear producers or other producers that use similar fabrics as production inputs, it is Shan's position in the Canadian market as a designer and trendsetter that makes Shan, in the Tribunal's view, unique and distinct from other Canadian producers. In other words, Shan does not compete with domestic producers, but with offshore producers.

Although Christina has indicated its intention to enter the high-end market²⁸ to compete directly with Shan's collections, it has not yet demonstrated a substantial commitment to start production. Should Christina or any other producer of women's swimwear believe that it is competing in the same market niche as Shan and, moreover, that it has the same requirements in terms of inputs as Shan, it could choose to file a request for tariff relief with the Tribunal.

The Tribunal notes that while Shan buys more than 80 percent of its fabrics in Europe²⁹, it purchases different domestic fabrics to produce *Les Must*, a line of clothing and accessories which includes T-shirts and cover-ups in black and white.³⁰ The Tribunal also notes that most of the evidence in this investigation pertains to printed fabrics and plain fabrics other than black or white. Although certain black fabrics and white fabrics can be purchased duty-free, the Tribunal believes that tariff relief should not apply to fabrics of a uniform solid colour of black or white which, the evidence shows, are purchased in significant volumes by Shan from domestic producers.

Having concluded that domestically produced fabrics are, for the most part, not substitutable for imported fabrics, the Tribunal must assess whether granting tariff relief on the subject fabrics will maximize net economic gains for Canada. In the Tribunal's view, while there will be some tariff revenues foregone by the government, there would be little or no commercial costs to either domestic textile producers or

27. The Tribunal notes that under the *United States-Israel Free Trade Agreement*, women's swimsuits, cut and sewn in Israel from European fabrics, and women's swimsuit pieces, simply cut to shape from European fabrics in Israel, would appear to qualify for duty-free entry into the United States provided that the sum of the cost or value of the materials produced in Israel and the direct costs of processing operations performed in Israel is "not less than 35 percent of the appraised value of each article at the time it is entered [into the customs territory of the United States]." Section 12.130 of Title 19 to the US Code of Federal Regulations; 61 US Federal Register 40076 (July 31, 1996) and General Note 8 to the Harmonized Tariff Schedule of the United States.

28. *Transcript of Public Hearing*, June 12, 1997, at 145.

29. Requester's Exhibit A-1, "Dossier allégement tarifaire" at 22, Administrative Record, Vol. 9.

30. Tribunal Exhibit TR-96-008-2 (protected), Administrative Record, Vol. 2; and Tribunal Exhibit TR-96-008-52 at 4, Administrative Record, Vol. 1.

swimwear producers of granting company-specific tariff relief on the subject fabrics, provided that there are quantitative limits imposed on the importations subject to tariff relief. Based on the quantitative limits recommended in this report, it is estimated that potential benefits for Shan would be at least equal to the tariff revenues foregone by the government and could reach approximately \$100,000 a year.

The Tribunal recognizes that there were numerous submissions by domestic textile producers and other swimsuit and apparel manufacturers in which concern was expressed regarding the potential for Shan to import fabrics to be used in producing swimsuits, “co-ordinated beachwear” and “co-ordinated accessories” in lower- and medium-price ranges in direct competition with other domestically produced finished products, thereby negatively affecting other domestic manufacturers of similar products, as well as affecting potential sales of domestically produced substitutable fabrics for these price ranges. Concern was also expressed about the use of the terms “co-ordinated beachwear” as well as “co-ordinated accessories,” in describing the end use for some of the fabrics for which tariff relief was requested by Shan.

Regarding these concerns, the Tribunal believes that the adoption of quantitative limits on importations subject to tariff relief, based on fabric groupings, provides a measure of protection against Shan expanding production into lower price ranges, as does a recommendation that tariff relief only be provided for five years, at the end of which a review of the measure may be undertaken. The Tribunal believes that, given these restrictions, and as a recognized designer of women’s swimwear, Shan would be highly unlikely to use its limited volume of imports subject to tariff relief to produce goods outside its market niche and risk damaging its reputation. Furthermore, regarding the description of the end-use applications, Shan indicated that what is most commonly meant by fabrics for “co-ordinated beachwear” and “co-ordinated accessories” is fabrics that are similar in terms of pattern or colour to fabrics used to make swimsuits. In addition, it indicated that these fabrics would need to be dyed or printed by the same supplier as that of the swimsuit fabric with which the beachwear or accessories are intended to co-ordinate.

Thus, in the Tribunal’s view, in administering tariff relief in respect of the fabrics imported by Shan for use in producing “co-ordinated beachwear” and “co-ordinated accessories,” the focus might reasonably be on whether the patterns or colours in these fabrics are similar to those imported for use in producing swimsuits and whether they were sourced from the same supplier. With respect to the end-use designations, the Tribunal is of the view that, given that the required fabrics are intended to have similar patterns or colours to those used for the swimsuits with which they are to “co-ordinate,” Shan’s “co-ordinated beachwear” and “co-ordinated accessories” are closely linked to its swimsuits by colour, design and detail, with the express purpose of being sold and worn together. Therefore, the Tribunal concludes that the administration of this recommendation should not cause undue difficulties to Revenue Canada.

As noted earlier, Shan requested that tariff item Nos. 5407.10.00 and 5903.20.20 be added to the investigation in the fabric groupings for woven fabrics and padding, respectively. Although the Tribunal does not generally expand the scope of the investigation after its commencement, in this particular case, it is of the view that it is appropriate to do so because: (1) these tariff items fall within the fabric groupings already identified in the appendix to the notice of commencement of investigation; (2) their inclusion did not affect the quantitative limits established at the time of commencement for each fabric grouping or change the intended end uses for the imported fabrics; and (3) interested parties were given sufficient notice of the general scope of the Tribunal’s investigation at the time of commencement, which included woven fabrics and padding, to allow them to participate if they so chose.

With respect to the application of quantitative limits on importations subject to tariff relief, the Tribunal notes that, in its final submission of June 5, 1997, Shan requested a global quantitative limit for fabrics based on the level of its 1996 imports of the subject fabrics and its domestic purchases of other inputs, and increasing it thereafter by annual increments of 30 percent over a five-year period. As indicated earlier, the Tribunal is of the view that limits should be established, based on fabric groupings, to provide a measure of security for domestic textile producers, as well as other manufacturers of women's swimwear and accessories. Furthermore, the starting point for quantitative limits should be Shan's total importations of the subject fabrics for the year 1996 and not its total consumption of domestic and imported fabrics as requested.

Consequently, the Tribunal is of the view that the starting levels of the quantitative limits with respect to woven fabrics of cotton, woven fabrics of man-made filaments and man-made staple fibres, nonwovens, padding and knitted fabrics should be increased by approximately 30 percent annually for the five-year duration of the measure. The quantitative limit for tulles would increase by 50 kg annually, to a maximum of 500 kg, as requested. The quantitative limit for narrow woven fabrics remains constant throughout the period because Shan requested a maximum quantity which was equal to the amount that it imported in 1996.

YEARLY LEVEL OF IMPORTS FOR THE FIVE-YEAR PERIOD

LES COLLECTIONS SHAN INC.

(m² unless otherwise specified)

<u>Fabric Category</u> ¹	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Woven Fabrics of Cotton	100	130	170	220	290
Woven Fabrics of Man-Made Filaments and Man-Made Staple Fibres	1,400	1,820	2,370	3,080	4,000
Nonwovens	3,000	3,900	5,070	6,590	8,570
Padding	190	250	325	425	550
Knitted Fabrics	35,750	46,210	59,770	77,310	100,000
Tulles (kg)	300	350	400	450	500
Narrow Woven Fabrics (kg)	500	500	500	500	500

1. Please refer to the appendix to obtain the tariff classification and description of goods for different product categories.

With respect to woven labels, the Tribunal notes that Hancock has considerable experience in producing labels. In its submission, Hancock indicated that it produces 192 million labels annually. Little information was provided by Shan as to why Hancock, or any other Canadian producer of labels, could not meet its specific requirements. The Tribunal, therefore, believes that Hancock and possibly other domestic

producers of labels are in a position to meet Shan's needs regarding woven labels, which, by definition, would be exclusive and produced in the quantities required by Shan.

With respect to the request for retroactive tariff relief to March 1, 1997, the Tribunal does not believe that there are extraordinary competitive circumstances in the domestic market that would warrant such a recommendation. The Tribunal notes that, since March 1, 1997, Shan's swimsuits, which are its primary product, are still afforded some protection under CIFTA by a phaseout of the tariff on women's swimsuits from Israel. On March 1, 1997, the tariff was at 21.2 percent and on July 1, 1997, it was reduced to 14.1 percent. This tariff will be further reduced to 7.0 percent as of July 1, 1998, and will be eliminated on July 1, 1999.

RECOMMENDATION

In light of the foregoing, the Tribunal hereby recommends to the Minister that the customs duty be removed for a period of five years, solely for Shan, on importations of the subject fabrics, excluding fabrics of a uniform solid colour of black or white, according to the fabric categories and volume schedule set out in the above table, for use in the manufacture of women's swimsuits, "co-ordinated beachwear" and "co-ordinated accessories."

The subject fabrics that are for use in the manufacture of "co-ordinated beachwear" and "co-ordinated accessories" are fabrics made by the same supplier that produces the subject fabric for use in the manufacture of a woman's swimsuit with which these fabrics are meant to co-ordinate. These subject "co-ordinated" fabrics are also of similar or complimentary patterns and colours as the subject swimsuit fabric.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Dr. Patricia M. Close
Dr. Patricia M. Close
Member

Charles A. Gracey
Charles A. Gracey
Member

Appendix**FABRIC GROUPINGS**

TARIFF CLASSIFICATION	DESCRIPTION OF GOODS
1. Woven Fabrics	
a) of Cotton (quantitative limit: 20,000 m ²)	
5208.31 to 5208.59	Woven fabrics of cotton, dyed, of yarns of different colours or printed, plain weave or 3-thread or 4-thread twill, including cross twill, and other fabrics, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m ² .
5210.31 to 5210.59	Woven fabrics of cotton, dyed, of yarns of different colours or printed, plain weave or 3-thread or 4-thread twill, including cross twill, and other fabrics, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/m ² .
5212.13 to 5212.15 5212.23 to 5212.25	Other woven fabrics of cotton, dyed, of yarns of different colours or printed.
b) of Man-Made Filaments and Man-Made Staple Fibres (quantitative limit: 60,000 m ²)	
5407.10.00*	Woven fabrics obtained from high-tenacity yarn of nylon or other polyamides or of polyesters.
5407.42 to 5407.94	Other woven fabrics, dyed, of yarns of different colours or printed, containing 85 percent or more by weight of: (1) filaments of nylon or other polyamides; (2) textured polyester filaments; or (3) polyester filaments. Other woven fabrics, dyed, of yarns of different colours or printed, containing less than 85 percent by weight of synthetic filaments, mixed mainly or solely with cotton. Other woven fabrics, dyed, of yarns of different colours or printed.
5408.22 to 5408.34	Other woven fabrics, dyed, of yarns of different colours or printed, containing 85 percent or more by weight of artificial filament or strip or the like. Other woven fabrics, dyed, of yarns of different colours or printed.
55.12	Woven fabrics of synthetic staple fibres, containing 85 percent or more by weight of synthetic staple fibres.
55.13	Woven fabrics of synthetic staple fibres, containing less than 85 percent by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170 g/m ² .
55.14	Woven fabrics of synthetic staple fibres, containing less than 85 percent by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m ² .
55.15	Other woven fabrics of synthetic staple fibres.
55.16	Woven fabrics of artificial staple fibres.
2. Nonwovens (quantitative limit: 10,000 m ²)	
5603.92 to 5603.94	Other nonwovens, whether or not impregnated, coated, covered or laminated, weighing more than 25 g/m ² .
3. Tullies (quantitative limit: 500 kg)	
58.04	Tullies and other net fabrics, not including woven, knitted or crocheted fabrics; lace in the piece, in strips or in motifs, other than fabrics of heading No. 60.02.
4. Narrow Woven Fabrics (ribbons) (quantitative limit: 500 kg)	
58.06	Narrow woven fabrics, other than goods of heading No. 58.07, excluding fabrics of tariff item No. 5806.40.00.

5. Padding (quantitative limit: 2,000 m ²)	
5903.20.20*	Textile fabrics containing man-made fibres, impregnated, coated, covered or laminated with polyurethane, other than those of heading No. 59.02.
5906.91.20	Other knitted or crocheted rubberized textile fabrics, containing man-made fibres, other than those of heading No. 59.02.
6. Knitted Fabrics (quantitative limit: 100,000 m ²)	
6002.30	Other knitted or crocheted fabrics, of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread.
6002.42	Other knitted or crocheted fabrics, warp knit (including those made on galloon knitting machines), of cotton.
6002.43	Other knitted or crocheted fabrics, warp knit (including those made on galloon knitting machines), of man-made fibres.
6002.92.90	Other knitted or crocheted fabrics; other, of cotton.
6002.93.00	Other knitted or crocheted fabrics; other, of man-made fibres.

* By letter dated April 30, 1997, Shan asked that these fabrics be included in the investigation.