



**BY FACSIMILE**

June 17, 1998

Mr. Ronald Racine  
Starber Fritz Inc.  
410, rue Saint-Nicolas  
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Montréal, Quebec  
H2Y 2P4

Dear Mr. Racine:

**Subject: Request for Amendment to the Tribunal's Recommendations in Request Nos. TR-96-008 to TR-96-013 (Les Collections Shan Inc.)**

Further to Les Collections Shan Inc.'s request for an amendment regarding the Canadian International Trade Tribunal's recommendations to the Minister of Finance, dated July 22, 1997, for tariff relief on certain imported fabrics, the Tribunal has directed me to inform you that it has decided that a review of its recommendations is not warranted at this time. The basis for the Tribunal's decision will follow at a later date.

Yours sincerely,

Michel P. Granger  
Secretary

Attach.

cc: Interested Parties and Counsel of Record



**BY FACSIMILE**

July 15, 1998

**To:** Parties to Investigation in Request for Review No. TD-97-001  
(Initial Request Nos. TR-96-008 to TR-96-013, Les Collections Shan Inc.)

**Subject:** Request for Amendment to the Tribunal's Recommendations

Further to the Tribunal's letter dated June 17, 1998, the following sets out the Tribunal's reasons for deciding that a review of its recommendations to the Minister of Finance (the Minister) for tariff relief on certain imported fabrics, as requested by Les Collections Shan Inc. (Shan), is not warranted at this time.

In its report to the Minister, dated July 22, 1997, the Tribunal recommended that the customs duty be removed for a period of five years, solely for Shan, on importations of the fabrics subject to the investigation, excluding fabrics of a uniform solid colour of black or white, according to various fabric categories and a volume schedule, for use in the manufacture of women's swimsuits, co-ordinated beachwear and co-ordinated accessories. The volume schedule incorporates a base amount for year one for each of seven fabric groupings which, in most cases, provides for a 30 percent increase each year.

On November 26, 1997, the Minister announced that, on November 20, 1997, the Governor in Council approved Order in Council P.C. 1997-1668, *Les Collections Shan Remission Order, 1997*, which provided remission to Shan of customs duties paid for up to five years on certain fabrics imported by Shan to manufacture women's swimsuits, co-ordinated beachwear and co-ordinated accessories with the Shan label.

By letters dated December 3 and 16, 1997, Shan requested that the Tribunal amend its recommendations to the Minister by increasing the annual quantitative limits for two fabric categories: woven fabrics of cotton (cotton fabrics), and woven fabrics of man-made filaments and man-made staple fibres (synthetic fabrics). For the period from November 1, 1997, to October 31, 1998 (year one), duty-free imports by Shan of cotton fabrics and synthetic fabrics are limited to 100 m<sup>2</sup> and 1,400 m<sup>2</sup> respectively. Shan requested that such limits be increased substantially to address its needs. Alternatively, Shan requested that up to 20 percent of the annual limit provided for knitted fabrics, currently set at 35,750 m<sup>2</sup>, be switched to cotton fabrics and synthetic fabrics.

In its request, Shan submitted that the volumes for the duty-free importation of cotton fabrics and synthetic fabrics were too small and would limit Shan's success in its trend-setting role, as recognized by the Tribunal, particularly in its production of co-ordinated beachwear and co-ordinated accessories. Specifically, Shan submitted that the volumes of cotton fabrics and synthetic fabrics exempted from duty in year one would be used up with Shan's fabric samples in those categories or, at best, in its first production run.

Shan took issue with the Tribunal's decision to base the volume of fabrics exempted from duty in year one on Shan's actual imports in 1996, since this suggests that similar or substitutable fabrics can be purchased from domestic production, which, in Shan's view, the Tribunal's investigation established was not the case. In any event, in 1996, 10,000 linear metres of domestically produced fabrics were purchased, but

these fabrics proved to be of unacceptable quality. Therefore, in Shan's view, the 1996 base figures should have taken this amount into account.

In further support of its request, Shan noted the technological advancements in the manufacture of cotton voile fabrics and their increased production by European textile manufacturers. In Shan's view, these fabrics provide a "middle" term solution to expensive synthetic fabrics and would enhance Shan's competitiveness in respect of co-ordinated beachwear and co-ordinated accessories, particularly those imported duty free from Israel.

The Tribunal informed parties to the investigation that led to the order for tariff relief of the request and provided them with an opportunity to make representations. Three interested parties responded: the Canadian Textiles Institute (CTI), Western Glove Works and the Canadian Apparel Manufacturers Institute (CAMI). All opposed the request.

The CTI indicated that it strongly opposes any review of the Tribunal's recommendations under the present circumstances. Western Glove Works emphasized that tariff relief should not have been granted on a company-specific basis in the first place and that any tariff relief should be granted to all manufacturers of swimsuits, co-ordinated sportswear and casual wear. CAMI submitted that a review or amendment of any Tribunal recommendations should only be undertaken where there has been an important change in market conditions since the original recommendations were made or where there has been an egregious error in arriving at one or more elements of the recommendations.

In its reply, Shan submitted that, although the Tribunal recognized that Shan is unique in terms of its fabric needs and place in the market, the Tribunal's application of quantitative limits for woven fabrics based on Shan's 1996 imports of these fabrics did not take into account Shan's needs in terms of innovation and fabric samples in very low volumes. Shan further submitted that the Tribunal erred by excluding its purchases of domestic fabrics in establishing its volumes for year one, since there are no domestic manufacturers capable of meeting its needs.

In considering whether a review is warranted, the Tribunal is of the view that there must be a reasonable indication that the circumstances that gave rise to the original recommendations have changed to such an extent that the continued validity of the recommendations is brought into question. Simply disputing the basis for the Tribunal's recommendations without showing that the factual circumstances considered by the Tribunal have sufficiently changed is not a basis for a review. Having considered the submissions of Shan, the CTI, Western Glove Works and CAMI, the Tribunal is of the view that this requirement has not been met at this time.

In the Tribunal's view, the arguments raised by Shan in support of a review do not indicate a change in the essential elements underpinning the Tribunal's recommendations. In particular, the fact that Shan's annual imports of fabrics in specific fabric groupings have increased is not, in and of itself, a change of circumstances sufficient to warrant the Tribunal to review its recommendations. This is germane where there has been no indication of a change in the protection required by domestic textile manufacturers, as well as other domestic swimsuit and apparel manufacturers.

When the Tribunal considered in its recommendations to the Minister the issue of whether the granting of tariff relief would maximize net economic gains for Canada, it indicated that, while some tariff revenues would be forgone by the government, "there would be little or no commercial costs to either domestic textile producers or 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.” In addressing the concerns of domestic textile producers and other swimsuit and apparel manufacturers regarding the potential for Shan to import fabrics for lower and medium price range swimsuits, co-ordinated beachwear and co-ordinated accessories, in direct competition with other finished products produced domestically, the Tribunal stated the following:

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.

The Tribunal went on to state the following regarding the application of the quantitative limits:

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.

In recommending that tariff relief in respect of cotton fabrics and synthetic fabrics be based on a schedule providing for a 30 percent annual increase, with the amount for year one based on the volumes of Shan’s imports of fabrics in 1996, the Tribunal considered Shan’s unique position in the industry as a relevant factor. However, it also considered the potential impact of granting tariff relief in respect of more significant volumes and, moreover, a global volume covering all the fabrics on other domestic swimsuit and apparel manufacturers, as well as domestic textile manufacturers. In other words, the Tribunal’s determination as to the appropriate quantitative limits and fabric groupings was made based on a balancing of these factors.

In addition, the Tribunal notes that, at the time of its recommendations, it was aware of the difficulties in terms of quality experienced by Shan in respect of certain domestically produced fabrics purchased in 1996. The Tribunal does not consider this fact an indication of a change in an essential element underpinning its recommendations, nor does it consider its decision not to include certain volumes of Shan’s domestic purchases in 1996 in establishing the volumes for year one to be in the nature of an error which would warrant a reconsideration of the Tribunal’s recommendations.

In light of the foregoing, the Tribunal does not consider that a review is warranted at this time.

Yours sincerely,

Michel P. Granger  
Secretary