



**REPORT TO
THE MINISTER OF FINANCE**

**REVIEW OF RECOMMENDATION
REGARDING
CERTAIN TEXTILE PRODUCTS IMPORTED BY
LES COLLECTIONS SHAN INC.**

OCTOBER 24, 2002

REVIEW NO. TA-2002-001

LES COLLECTIONS SHAN INC.

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INTRODUCTION

On February 22, 2002, the Canadian International Trade Tribunal (the Tribunal) gave notice¹ that the tariff relief order (Order in Council P.C. 1997-1668) made on November 20, 1997, to implement the Tribunal's recommendation to the Minister of Finance (the Minister) in Request Nos. TR-96-008 to TR-96-013, concerning certain textile products imported by Les Collections Shan Inc. (Shan), was scheduled to expire on October 31, 2002. Under the Minister's standing reference, the tariff relief provided by this order will cease unless the Tribunal issues a recommendation that tariff relief is still warranted and a tariff relief order is made by the government.

On the basis of representations requesting or opposing the initiation of a review received in reply to that notice, the Tribunal, on May 6, 2002, gave notice² that it was commencing an investigation for the purpose of recommending the renewal, amendment or termination of the tariff relief order on certain textile products imported by Shan (the subject products). The Tribunal indicated that the review would be conducted by way of written submissions and that it would accept evidence on whether to recommend that the tariff relief order, if renewed, provide flexibility to allow some product substitution among product classes. It also indicated that it would consider requests from other manufacturers of women's swimwear for tariff relief identical to that provided to Shan. Companies seeking such relief would have to demonstrate, among other things, that they are competing in the same market niche as Shan and that tariff relief is warranted on the same products.

As part of the review, the Tribunal's research staff sent questionnaires to potential producers of products identical to or substitutable for the subject products. A request for information was also sent to potential users and importers of the subject products. Letters were sent to a number of government departments requesting information and advice. On July 12, 2002, a staff investigation report summarizing the information received from questionnaire respondents and other interested parties along with that received from the Department of Foreign Affairs and International Trade (DFAIT) was provided to those that had become parties to the proceedings by filing notices of appearance in the review. Following distribution of the staff investigation report, Agmont Inc. (Agmont), Christina America Inc. (Christina), Tricots Liesse (1983) Inc. (Liesse) and Shan filed submissions and/or reply submissions with the Tribunal.

BACKGROUND

On December 23, 1996, the Tribunal received six separate requests from Shan, of Laval, Quebec, for tariff relief on certain imported products. 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, from all countries, of certain: (1) knitted fabrics, narrow woven fabrics, nonwoven fabrics, padding, tulle, woven fabrics of cotton and woven fabrics of man-made filaments and man-made staple fibres; 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". In its final submission of June 5, 1997, Shan requested a global quantitative limit for products based on the level of its 1996 imports of the subject products and its domestic purchases of other inputs of that year, increasing that limit thereafter by annual increments of 30 percent over a five-year period.

1. C. Gaz. 2002.I.536.
2. C. Gaz. 2002.I.1509.
3. R.S.C. 1985, c. 41 (3d Supp.).

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 certain issues.

In its report to the Minister, dated July 22, 1997, the Tribunal stated that it was persuaded by the evidence that Shan occupied a unique position within the Canadian women's swimwear industry and that Shan's uniqueness extended to its "co-ordinated beachwear" and "co-ordinated accessories", which included cover-ups, wraps, handbags and other accessories manufactured largely with prints similar to those used to produce the swimsuits with which they are intended to be sold. It stated that there might be domestic products that were technically substitutable for some of the products for which Shan had requested tariff relief, such as plain fabrics in solid colours, but that, for the most part, domestic producers did not appear to produce the variety and quality of fabrics and prints required by Shan.

The Tribunal noted that the Minister's terms of reference contemplated company-specific relief and was of the view that, in this case, company-specific relief was appropriate because Shan occupied a unique position within the Canadian women's swimwear industry. The Tribunal came to this conclusion despite the fact that some domestic producers of swimwear, as well as the Canadian Apparel Manufacturers Institute, indicated their opposition to a recommendation for company-specific tariff relief. Their position stemmed largely from the view that company-specific relief would be unfair to other domestic users of similar fabrics.

The Tribunal also noted that most of the evidence pertained to printed fabrics and plain fabrics other than black or white. Although certain black fabrics and white fabrics could be purchased duty free, the Tribunal believed that tariff relief should not apply to fabrics of a uniform solid colour of black or white, which, the evidence showed, were purchased in significant volumes by Shan from domestic producers.

The Tribunal recognized that there were numerous submissions by domestic textile producers and other swimwear and apparel manufacturers in which concern was expressed regarding the potential for Shan to import products 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 potential sales of domestically produced substitutable products in these price ranges.

Regarding these concerns, the Tribunal was of the view that the adoption of quantitative limits on importations subject to tariff relief, based on product groupings, provided a measure of protection against Shan expanding production into lower-price ranges, as did a recommendation that tariff relief only be provided for five years, at the end of which a review of the measure might be undertaken. The Tribunal believed that, given these restrictions and as a recognized designer of women's swimwear, Shan would very unlikely use its limited volume of imports subject to tariff relief to produce goods outside its market niche and risk damaging its reputation.

Regarding Shan's request for a global quantitative limit for products based on the level of its 1996 imports of the subject products and its domestic purchases of other inputs, increasing the limit thereafter by annual increments of 30 percent over a five-year period, the Tribunal was of the view that limits should be established, based on product groupings, to provide a measure of security for domestic textile producers, as well as other manufacturers of women's swimwear and accessories. It also determined that the starting point for quantitative limits should be Shan's total importations of the subject products for the year 1996 and not its total consumption of domestic and imported products as requested.

Consequently, the Tribunal was 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 tulle would increase by 50 kg annually to a maximum of 500 kg, as requested. The quantitative limit for narrow woven fabrics would remain constant throughout the period because Shan requested a maximum quantity that was equal to the amount that it imported in 1996.

With respect to woven labels, the Tribunal noted that George Hancock Textiles Limited (Hancock), of Cambridge, Ontario, had considerable experience in producing labels. In its submission, Hancock indicated that it produced 192 million labels annually. Shan provided little information as to why Hancock, or any other Canadian producer of labels, could not meet its specific requirements. The Tribunal therefore believed that Hancock and possibly other domestic producers of labels were 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.

The Tribunal was of the view that 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 products, provided there were quantitative limits imposed on the importations subject to tariff relief. It was estimated that potential benefits for Shan could reach approximately \$100,000 a year.

On November 26, 1997, the Minister announced that, on November 20, 1997, the Governor in Council had made *Les Collections Shan Remission Order, 1997*.⁴ The order provided remission for a period of five years, subject to the annual quantity limits set out in Appendix I, of the customs duties paid or payable on products used by Shan in the manufacture of swimwear, on the condition that:

- (a) the textile products are used by Shan in the manufacture of women's swimsuits with the *Shan* label; and
- (b) the textile products that are imported by Shan for use in the manufacture of women's "co-ordinated beachwear" and "co-ordinated accessories" with the *Shan* label have a similar or complementary pattern and colour to the textile products used by Shan in the manufacture of women's swimsuits and are made by the same supplier.

By letters dated December 3 and 16, 1997, Shan requested that the Tribunal amend its recommendation to the Minister by increasing the annual quantitative limits for two fabric categories: woven fabrics of cotton, and woven fabrics of man-made filaments and man-made staple fibres. For the period from November 1, 1997, to October 31, 1998, duty-free imports by Shan of woven fabrics of cotton and woven synthetic fabrics were limited to 100 m² and 1,400 m² respectively. Shan requested that such limits be increased substantially to address its needs. Alternatively, it requested that up to 20 percent of the annual limit provided for knitted fabrics, set at 35,750 m², be switched to these two fabric categories.

In considering whether a review was warranted, the Tribunal stated that there must be a reasonable indication that the circumstances that gave rise to the original recommendation have changed to such an extent that the continued validity of the recommendation is brought into question. The Tribunal indicated

4. The Minister also directed the Tribunal to adopt modified terms of reference that excluded company-specific relief, except in respect of requests for tariff relief on inputs for women's swimsuits, "co-ordinated beachwear" and "co-ordinated accessories". He stated that it would be inequitable, in the circumstances, if manufacturers of women's swimwear were to be denied the opportunity to seek relief similar to that sought by Shan, if they began competing in the same market niche and could, among other things, demonstrate that tariff relief was warranted on their fabrics.

that simply disputing the basis for its recommendation, without showing that the factual circumstances that it considered have sufficiently changed, was not a basis for a review. On the basis of the information available, it concluded that this requirement had not been met.

PRODUCT INFORMATION

The subject products, imported mostly from Europe, are used in the manufacture of women's swimsuits and what has been referred to as "co-ordinated beachwear" and "co-ordinated accessories". Appendix II provides a description of the product groupings covered by the tariff relief order on the basis of the 2002 *Customs Tariff*. The tariff classification for padding and knitted fabrics is different from the one outlined in the tariff relief order because the 2002 *Customs Tariff* reflects changes made to the *Harmonized Commodity Description and Coding System* during the World Customs Organization's major review of that system.

As of January 1, 2002, textile products classified under the major product groupings are, in most cases, dutiable at 13 percent or 16 percent *ad valorem* under the MFN tariff and are duty free under the United States Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

REPRESENTATIONS

Position of the Swimwear Industry

Shan

Shan indicated that, since tariff relief was granted, its swimsuit, "co-ordinated beachwear" and "co-ordinated accessories" collections had increased in value added, which has resulted in higher prices and a positioning in the higher end of the market. In this regard, Shan indicated that the Shan swimsuit, which sold for \$45 to \$75 at the wholesale level in 1997, now sells for \$75 to \$175. It stated that, because the experience was not too positive, it abandoned *Shan Bis*, a more affordable line of swimwear, after two seasons (1999 and 2000). Afterwards, Shan introduced a new high-end collection, *S by Shan*, in the \$45 to \$75 niche at the wholesale level. It indicated that this collection, although somewhat less exclusive in its prices, is still positioned in the high end of the market and is available in well-known specialized boutiques.

Shan stated that domestically produced fabrics are developed for and aimed at the lower to medium market niches. It stated that Canadian fabric producers do not cater to the high end of the market and are even less concerned with ready-to-wear "co-ordinated beachwear". Shan also indicated that: (1) sampling of high-end fabrics is not available in Canada; (2) the minimum order requirement for the production of fabrics is 300 linear metres in Canada (also applies to colour) compared to 50 linear metres in Europe; (3) materials for the ready-to-wear market for "co-ordinated beachwear" are not available in Canada; (4) worldwide exclusivity of colours and designs developed and chosen for the *Shan* or *S by Shan* label is not available in Canada; (5) the production and delivery schedules of Canadian fabric producers are inappropriate for a market niche of trends and innovation; and (6) innovative materials are not available in Canada for the high end of the market.

With respect to actual and anticipated benefits or costs, Shan stated that tariff relief has enabled it to produce collections that have improved its brand image and sales in Canada, which, in turn, have made it more competitive with foreign collections in Canada. According to Shan, tariff relief has also enabled it to maintain employment levels in its facilities, to improve its production equipment and to ensure growth in international markets. Shan claimed that, in the short term, tariff relief has permitted it to absorb a part of the

financial risks linked to the development of the brand. It stated that, without tariff relief, the choice of fabrics would be limited, given the cost, thereby impeding its ability to set trends and tarnishing its reputation, especially on the international scene.

Shan submitted that it is still impossible to buy co-ordinated fabrics in Canada for the development of certain swimwear clothing themes. In this connection, Shan stated that an experience with a Canadian supplier proves to it that it would be risky, even commercially dangerous, to pursue this route. It submitted that Canadian textile companies have based their arguments on the fact that they supply products to swimwear manufacturers. While acknowledging that this is an important market to develop technology and production, Shan stated that this development is done for a high volume of swimsuits, which are sold mostly in large department stores. It indicated that this is not compatible with the kind of purchases that it made and the volumes that it used.

Shan submitted that the quantitative limits with respect to woven fabrics of cotton and woven fabrics of synthetic fibres were set by the Tribunal in an arbitrary manner so as to prevent the overflow of Shan products into other market segments. Moreover, it submitted that these limits do not reflect its real needs and do not respect the spirit of the Tribunal's decision, which was based on the matching of woven fabrics and co-ordinated knitted fabrics as a fundamental criterion in this market segment. Shan stated that, by restricting the importation of fabrics for "co-ordinated beachwear", this critical factor was not respected.

Shan submitted that the exclusion of fabrics of a uniform solid colour of black or white in the Tribunal's recommendation was not justified and that, during the 2000-2001 period, importations of these fabrics increased. Accordingly, Shan was required to pay a significant amount of duties. It indicated that its main objective is to set trends regardless of colours or prints and that tariff relief on black or white fabrics would not adversely affect any Canadian manufacturer, especially in this market niche. Shan also indicated that the ribbons that it chose for its 2001 and 2002 collections fall outside the subheading outlined in the tariff relief order.

With respect to specific points raised by other parties, Shan stated the following:

- The fact that Christina intends to produce under a designer label does not make it a recognized designer. The *XOXO* label swimsuit that Christina intends to produce under licence is in a market segment different from that for Shan's products. As far as *Gottex Silver* is concerned, only the creation and design of a product in Canada would enable a comparison to *S by Shan* in the market.
- Based on its recent experience with Agmont, it is evident that the Canadian industry, including major companies with experience in a particular market segment, may be unable to respond to the needs of another segment. Likewise, small Italian workshops would not be able to produce what Agmont produces on a large scale.
- Consoltex Inc. (Consoltex) only produces textile products that can be used in the production of men's swimwear.
- Hafner's concerns with respect to any expansion of the tariff relief order may be justifiable in Christina's case, but are not applicable to Shan.

- Problems faced by Nalpac, i.e. that it is losing a major portion of the U.S. market because of the *Caribbean Basin Trade Partnership Act* (CBTPA),⁵ do not concern Shan in this review.
- Knitted fabrics produced by Liesse do not meet Shan's needs for high-quality textile products.

In sum, Shan submitted that: (1) the exclusion of black or white fabrics does not reflect the everchanging trends that are essential in this market niche; (2) the maximum quantitative limits should be eliminated; (3) in this market niche, no Canadian manufacturer of fabrics or swimsuits and "co-ordinated beachwear" can demonstrate a negative impact, past or future; (4) any objection to the continuation of tariff relief must be based on precise and real facts, not just intentions or projections; and (5) no quantitative limits or restrictions were imposed on black or white fabrics in the *Designer Remission Order, 2001*.⁶

In reply submissions, Shan submitted that the only substantial reason to object to the renewal or amendment of the tariff relief order is the Canadian textile industry's fear of losing Christina, as a purchaser of textile products, to European textile mills. Shan stated that Christina has always indicated its intention to enter the high end of the market, but has never demonstrated that it could produce high-end products on a commercial basis. It also stated that, because Christina's commercial development processes are completely different from those of a high-end designer, Christina should request tariff relief within the framework of its specific needs for textile inputs. Shan indicated that the retail stores, i.e. Les Boutiques San Francisco Incorporées and Sears, which supported Christina's request for tariff relief, would never adversely affect its sales, since its high-end products would never be found in such outlets.

Shan submitted that it has demonstrated that it serves a very small and unique market niche in Canada and, considering the small volumes of goods that it imports, the Canadian textile industry would suffer no injury, should tariff relief be continued. It also stated that, under the tariff relief order, it has not expanded into other market segments.

Shan submitted that it has made some efforts to develop textile products with the Canadian textile industry, but that these efforts are aimed at lower-end products and at Shan's men's product line. It indicated that, although Liesse may offer low sampling quantities and exclusivity on knitted fabrics, nothing compares with the possibility of obtaining co-ordinated woven fabrics, printed or even solid colours from European manufacturers.

Christina

Christina, of Montréal, Quebec, was formed in 1952 and is Canada's largest manufacturer of women's and children's swimsuits. In July 2001, Christina was sold to Africa-Israel Investments Ltd., owner of Gottex Co., which specializes in the production of high-end swimwear.

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5. The CBTPA grants duty-free access to the United States for garments made with U.S. textile products only and formed in the Caribbean countries.
 6. This order (Order in Council P.C. 2001-2283) made on December 13, 2001, provides tariff relief for certain Canadian fashion designers of men's and women's apparel. Eligible designers are entitled to access duty-free a wide range of fabrics priced at \$14 or more per square metre, indexed annually to compensate for inflation, for use in the manufacture of apparel. It does not include fabrics for swimwear production covered by subheading Nos. 6112.31, 6112.39, 6112.41, 6112.49, 6211.11 and 6211.12.

Christina requested tariff relief on imported knitted fabrics classified in subheading Nos. 6002.30, 6002.42 and 6002.43⁷ and certain cotton fabrics. In this regard, it indicated that it intends to start importing these fabrics during the November 1, 2002, to October 31, 2003, period.

Christina stated that it intends to produce designer labels, such as *Gottex Silver* and *XOXO* label, with European textile products and to compete in the same market segment as Shan. It claimed that high-quality textile products are not available in Canada and that European products are trendier and not subject to any minimum order requirements. Moreover, Christina stated that domestic textile producers are unable to perform screen-printing with acid dyes on knitted synthetic fabrics (e.g. nylon/spandex).⁸

Christina indicated that tariff relief would allow it to achieve significant market growth, to break through an already competitive Canadian market and to be in a better position to export Canadian-made products to the United States. It also indicated that its request for tariff relief would not jeopardize any employment, nor decrease production or other purchases relating to swimwear.

In its reply submission, Christina submitted that its request for tariff relief is for the development and production of *Gottex Silver*, a new line that is linked to the original designer, Gottex. It indicated that it would maintain the same strategy and production volumes with respect to its low- to medium-priced product lines.

Christina submitted that it currently produces its own knitted fabrics and that it purchases minimal quantities of fabrics from Canadian textile producers. In light of the foregoing, it indicated that sales to these textile producers would not be adversely affected. Christina also indicated that Agmont does not have the capability to produce the printed fabrics required by designers. It stated that, in the past, it had purchased minimal quantities from Agmont and that new purchases would be limited to knitted fabrics of solid colours. Christina indicated that it has only purchased linings from Consoltex and Hafner and that Nalpac, although capable of producing warp-knit fabrics of solid colours, is not in a position to produce printed knitted fabrics. It stated that its purchases of knitted fabrics from Liesse represent less than 1 percent of its total production of fabrics in solid colours and that the samples submitted by Liesse are only in solid colours and used as base products. In this regard, Christina indicated that consumers, in 90 percent of cases, request swimwear made of striped, multicoloured or printed designs, with the rest being made with knitted fabrics of solid colours.

Christina submitted that a designer should only be defined on the basis of the price of the imported textile product, the selling price of the finished product or the brand name of the product, e.g. *Gottex*, and not on the basis of the production line.

Position of the Domestic Textile Industry

Agmont

Agmont, of Montréal, Quebec, has been manufacturing circular knitted fabrics for 36 years. It stated that it operates a state-of-the-art-knitting factory and that, in 1994, it established the most advanced dyeing

7. Under the 2002 *Customs Tariff*, these subheadings are now covered by heading No. 60.04 and subheading Nos. 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43 and 6005.44.

8. Christina further indicated that, because this type of printing is not available in Canada, it obtained a ruling from the Canada Customs and Revenue Agency to allow it to have these knitted fabrics screen printed in the United States without having to incur import duties on their re-importation into Canada.

and finishing plant for knitted fabrics in North America with an investment of \$12 million. Agmont produces cotton, polyester/cotton, cotton/Lycra and specialty blend knitted fabrics for the swimwear, body wear, sportswear and lingerie markets.

Agmont opposed the renewal of the tariff relief order with respect to knitted fabrics classified in subheading Nos. 6002.30, 6002.92 and 6002.93,⁹ as well as any expansion of this relief. It stated that it produces and sells high-quality knitted fabrics that would meet the requirements of any swimwear manufacturer. Agmont also indicated that it is equipped to develop special knitted fabrics in close co-operation with customers and, because of the exceptional versatility of its circular knitting equipment, it is able to supply high-end knitted fabrics in relatively small quantities.

Agmont stated that the quantitative limit for imports of knitted fabrics was set at 100,000 m² in the tariff relief order and that this quantity exceeded any justifiable need. According to Agmont, this is supported by Shan's request to increase its quantitative limit for woven fabrics of cotton and woven fabrics of synthetic fibres in exchange for a reduction in its limit for knitted fabrics.

In its reply submission, Agmont submitted that the circular knitted fabric ordered by Shan and offered by Shan as evidence of Agmont's inability to supply acceptable knitted fabrics was one of the most difficult fabrics to produce. Agmont stated that it has produced this specific kind of knitted fabric for U.S. manufacturers of high-end athletic sportswear and that one of these manufacturers remarked that it could not obtain the knitted fabric anywhere else in the world because it was too difficult for anyone else to produce. As for the knitted black or white cotton fabrics ordered by Shan that were also unsatisfactory, it stated that it now understands Shan's preference and is now confident in its ability to satisfy such orders in the future.

Consoltex

Consoltex, of Ville Saint-Laurent, Quebec, is a major producer of fabrics of man-made woven fibres. It sells woven fabrics to Canadian producers of swimwear for use in the manufacture of women's and children's co-ordinates and accessories, as well as for use in the production of men's swimwear.

Consoltex is not opposed to the continuation of the tariff relief nor to its application to other manufacturers of swimwear, on the condition that the Tribunal: (1) secure Consoltex's existing market by the imposition of a minimum price for the purchase of the subject products; (2) not allow any substitution or transfer of quantities among fabric classes as established in the current order; and (3) clearly define what is meant by the high end of the market so as to ensure that duty-free products do not displace existing Canadian textile products in the market.

Consoltex stated that, on the basis of the information provided by Shan, nothing proves that the tariff relief for Shan has enabled it to maintain production and jobs while, at the same time, increasing exports and maintaining its position in the high-end segment of the market in Canada. On the other hand, Consoltex stated that an informal survey of the *S by Shan* collection sold in the boutiques of San Francisco Maillots and Bikini Village located in Pointe Claire, Quebec, revealed that the swimsuits, "co-ordinated beachwear" and "co-ordinated accessories" of this collection are in a category of their own.¹⁰

9. Under the 2002 *Customs Tariff*, these subheadings are now covered by heading No. 60.04 and subheading Nos. 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43 and 6006.44.

10. Tribunal Exhibit TA-2002-001-12.4, Administrative Record, Vol. 3 at 119.

Consoltex stated that any substitution among fabric classes described in the order would create uncertainty for domestic suppliers of textile products. It indicated that Shan's main market is the production of swimsuits and not the production of co-ordinates and accessories. In this regard, Consoltex stated that it is important to maintain a distinction between the knitted fabrics used for swimsuits and the other textile products used for co-ordinates and accessories.

Hafner

Hafner, of Granby, Quebec, was established in 1954 and currently employs 400 people. Hafner produces warp-knit fabrics for use in the manufacture of swimwear, basic garments and sportswear. It also produces woven fabrics for the upholstered furniture industry. Hafner indicated that the swimwear market represents approximately 44 percent of its production, sales and gross profit.

Hafner is not opposed to the renewal of the tariff relief order with the existing annual quantitative limits, but is opposed to any increase in these limits because this would result in a loss of the Canadian market for Hafner. It expressed concern about the level of control with respect to the entry of duty-free textile products that, in theory, must only be used in the manufacture of "designer" swimsuits. Given that the term "designer" is very subjective and open to interpretation, Hafner indicated that additional textile products could be imported at the expense of Canadian production. In this regard, it suggested that the term "designer" be better defined, either by a price point of the imported textile products or a selling price of the swimwear. According to Hafner, this would provide an objective basis to determine whether the textile products are used in the production of high-end swimwear.

Hafner stated that the administration of the existing program is fairly simple, given that Shan is the only beneficiary of the tariff relief. However, the arrival of Christina, a producer of swimwear covering mostly other segments of the market, would create a problem with the administration of the program. It indicated that, although Christina intends to produce swimwear in order to compete with Shan, this company also produces swimwear in the mid-price range, a market that is not covered by the Tribunal's original decision. Hafner stated that it is highly possible that the subject products would be used in this market segment.

Should the tariff relief order be terminated, Hafner indicated that its sales would increase slightly. Should the tariff relief order be renewed on the basis that it would only apply to Shan and that the annual quantitative limits would not change, it stated that the impact would be minimal on its level of activity. Should the tariff relief order be renewed and amended to include other manufacturers of swimwear, Hafner submitted that it would suffer a loss, possibly high, depending on the quantitative limits and the level of increase with respect to knitted fabrics.

Nalpac

Nalpac, of Montréal, Quebec, a major producer of warp-knit and circular knitted fabrics since 1941, employs 300 people at its plants in Montréal and Longueuil, Quebec. It generates 60 percent of its business from exports. Nalpac indicated that it has invested several million dollars in equipment over the past three years in order to develop new products and to open new markets and is opposed to the continuation of the tariff relief.

Nalpac stated that the worldwide market for textiles has been in turmoil for the past few years and that the implementation of the CBTPA is removing a major portion of the U.S. market currently available to Canadian textile manufacturers such as Nalpac. As a result, it stated that knitters have developed new

business in the higher end of the market, such as that required by Shan. Should tariff relief be continued, Nalpac stated that this would cut off an important means of survival for Nalpac in the new global market. It indicated that it has supplied knitted fabrics to Shan in the past and is able to supply Shan with the knitted fabrics required by that company. Nalpac indicated that it also supplies Shan's competitors with knitted fabrics.

Nalpac stated that, since there are other swimwear manufacturers competing with Shan in the upscale end of the market, any extension of the tariff relief to those competitors would diminish the market available to Nalpac. According to Nalpac, this would have negative consequences on its profitability and its ability to maintain employment and to make capital investments. Nalpac stated that the result would be compounded if the Tribunal decided to enlarge the ruling to solid black or white fabrics.

Liesse

Liesse, of Ville Saint-Laurent, Quebec, a producer of circular knitted fabrics since 1964, opposed the continuation of tariff relief and any proposal to amend the tariff relief order in respect of circular knitted fabrics. It stated that the tariff relief order eliminates the incentive normally provided by the tariff for Shan to purchase excellent knitted fabrics produced by Liesse.

Liesse indicated that it currently produces single-knit and double-knit swimwear fabrics with plain, stripe, jacquard, multi-level surfaces and designs, crochets and cover-up co-ordinated fabrics. It stated that its product range has expanded and its ability to serve the high end of the swimwear market increased dramatically in 1999 when it made a major capital investment in a new state-of-the-art dye house facility. In this regard, Liesse stated that it can develop or supply virtually any circular knitted product that its customers may require, at a quality level as good as that of any foreign competitor. It indicated that all its operations are conducted in-house.

Liesse indicated that it offers, manufactures and sells many styles of circular knitted fabrics covered by subheading No. 6002.30 or tariff item No. 6002.92.90 or 6002.93.00 for domestic sale and export to the United States and overseas. It stated that, when selling knitted fabrics to the European swimwear market, it competes with European knitters and also faces an European Union fabric tariff, which affects its prices negatively. Liesse also stated that it is disadvantageous for it to face tariffs in Europe, while its own government remits duties on swimwear textile products at home.

Liesse submitted that it sells a high proportion of its production to swimwear manufacturers in Canada (e.g. Baltex and Christina) and the United States and that it has achieved market acceptance in its specialties, which are the design, production and sale of circular knitted swimwear fabrics. It stated that it has established good relations with Gottex and has, on a small scale, made sales of fabric to this customer in the past. Liesse submitted that its customers outside Canada include manufacturers of upscale brands that are retailed at price points equivalent to the retail prices of *Shan* and *S by Shan*. In this regard, it provided nine samples of knitted fabrics that it has produced and exported in recent seasons, for use in upscale swimwear with selling prices ranging from approximately \$13 to \$29 per square metre.

Liesse also submitted that the threat of Israeli swimwear imports, which it claims was the basis of the original Shan request and the Tribunal's original recommendation, has receded sharply since the year 2000. According to Liesse, the very existence of a tariff relief order of this kind implies that the domestic knitting industry is unable to supply the subject products. Liesse indicated that it offers: (1) minimum order requirements of 80 metres; (2) worldwide exclusivity of colours and designs; and (3) competitive production and delivery schedules.

Should the tariff relief order be continued for Shan, Liesse stated that the quantitative limit of 100,000 m² for the knitted fabric import category should be reduced. It stated that the *Designer Remission Order, 2001* which provides duty remission for fabrics having a value of \$14 or more per square metre, but excludes fabrics used in the production of swimwear, could have some relevance in this review.

In reply submissions, Liesse submitted that Shan is not in a position to allege that Liesse cannot respond to its needs because Shan has not reviewed, sampled or purchased any Liesse knitted fabrics. It also indicated that Shan, over a period of months, has resisted efforts to make meaningful contacts with Liesse. With respect to black or white fabrics, Liesse submitted that the reasons for the exclusion of these fabrics from the existing order remain valid today.

Liesse submitted that it is not reasonable to conclude that a knitted fabric producer, capable of selling to certain upscale U.S. swimwear manufacturers, is incapable of serving Shan successfully in the same manner. It submitted that these U.S. manufacturers have established the market acceptance of the Liesse knitted fabrics.

Liesse submitted that statements made by Christina that the swatches are only solid colours and do not reflect any designs are inaccurate. It indicated that its total sales to Christina have increased and that fancy styles and yarn-dyed knitted fabrics now represent more than two thirds of its total sales to Christina. Liesse indicated that it does not produce or sell printed knitted fabrics, but produces and sells prepared-for-printing (PFP) swimwear knitted fabrics. It stated that it refutes any suggestion that it is uncompetitive with foreign producers in the design and quality of such fabrics. Liesse indicated that it is willing and able to supply Christina with such fabrics.

OTHER INFORMATION

DFAIT informed the Tribunal that Canada continues to maintain quota restraints on several products covered by this review. However, it should be noted that most of the imports covered by the tariff relief order originate in countries not subject to quantitative restraints.

ANALYSIS

The Tribunal is of the view that Shan should continue to benefit from tariff relief and, furthermore, that some measure of flexibility of that tariff relief is required for Shan to be able to meet the changing needs of the marketplace, especially as this flexibility relates to knitted fabrics and woven fabrics of cotton and woven synthetic fabrics. The basis for this opinion is the uncontradicted evidence that Shan is characterized as a designer within the Canadian women's swimwear industry. As such, it continues to purchase small volumes of high-quality fabrics from Europe at high prices so as to continue to serve its designer market niche. Moreover, these fabrics change from season to season because Shan produces trendsetting swimsuits, "co-ordinated beachwear" and "co-ordinated accessories" for a clientele that wants a sophisticated product created by an established designer. In this regard, the record indicated that the existing order has not met Shan's full requirements with respect to woven fabrics of cotton and woven fabrics of man-made filaments and man-made staple fibres.¹¹

On the other hand, the Tribunal believes that Canadian producers of high-quality fabrics should be able to sell to Shan. As the existing order now stands, there is little incentive for Shan to purchase fabrics from domestic sources because it has the ability to purchase imported fabrics without duty, regardless of

11. Tribunal Exhibit TA-2002-001-22 (protected), Administrative Record, Vol. 2 at 168.

price. The record of this review shows that Shan could avail itself of some domestic capability. For example, Liesse sells high-quality knitted fabrics to U.S. manufacturers of upscale designer brands that are retailed at price points equivalent to the retail prices of the *Shan* and *S by Shan* designer labels.¹² It also appears that Agmont could supply some knitted fabrics to Shan, given the proper level of co-operation by the latter. In the Tribunal's view, these two producers could supply knitted fabrics to Shan, essentially valued at less than \$14 per square metre.¹³

In these circumstances, the Tribunal is of the view that, instead of the current company-specific order for tariff relief, the generic *Designer Remission Order, 2001* (suitably amended) would be a more appropriate mechanism for Shan or any other recognized swimwear designer to access, duty free, a wide range of fabrics. The *Designer Remission Order, 2001* provides tariff relief on fabrics priced at \$14 or more per square metre. Evidence on the record indicates that Shan normally purchases fabrics from offshore sources at average prices higher than \$14 per square metre.¹⁴ Moreover, Shan has requested that black fabrics and white fabrics be added, as they were excluded from *Les Collections Shan Remission Order, 1997*. The *Designer Remission Order, 2001* would enable Shan and other swimwear designers to obtain fabrics of a uniform solid colour of black or white, provided they met the minimum price. Furthermore, the limitation on volume for tariff relief is not part of the *Designer Remission Order, 2001*, as it is under the present *Les Collections Shan Remission Order, 1997*. Therefore, a switch to the *Designer Remission Order, 2001* would add an element of flexibility absent in the existing order, provide coverage of plain black or white fabrics and, at the same time, provide Canadian fabric manufacturers a greater opportunity to sell to Shan.

In order for the *Designer Remission Order, 2001* to be applicable to Shan, it would have to be amended. As it presently stands, swimwear is the one designer product specifically excluded. Since the *Designer Remission Order, 2001* was drafted after *Les Collections Shan Remission Order, 1997* was made, it is the Tribunal's view that swimwear was excluded because it was already covered in its own remission order. It is the Tribunal's view, however, that the *Designer Remission Order, 2001*, if amended specifically to accommodate designers such as Shan, would be a much more flexible instrument than the existing order, while providing, at the same time, an opportunity for Canadian manufacturers to sell less expensive fabrics to swimwear designers.

The Tribunal is of the opinion that amending the present *Designer Remission Order, 2001* is preferable to re-drafting the current Shan order along the lines of the present *Designer Remission Order, 2001*. First, from an administrative point of view, having two sets of designer remission orders, one for Shan and another for all other Canadian designers, would be inefficient. This administrative complexity would be compounded if another swimwear manufacturer convinced the Tribunal that it, too, is a designer. Second, the *Designer Remission Order, 2001* may well be amended at some time in the future, as circumstances change. Should this happen, the Tribunal's recommendations that led to the Shan order and any other swimwear designer remission orders would need to be reviewed before any new amendments could be made to these orders. This would create an additional and unnecessary burden on parties.

Although some products imported by Shan under the current tariff relief order may not be covered by the *Designer Remission Order, 2001*, these products are imported in limited quantities and, as such, do not represent significant duty savings or a significant fraction of the total cost of the apparel made by Shan.

12. Tribunal Exhibit TA-2002-001-24.1 (protected), Administrative Record, Vol. 6 at 3, 5.

13. *Supra* note 11 at 169.

14. *Ibid.*

As indicated in the notice of review, the Tribunal indicated that it would consider requests from manufacturers of women's swimwear for tariff relief identical to that provided to Shan. The notice also indicated that companies seeking such relief would have to demonstrate, among other things, that they are competing in the same market niche as Shan and that relief is warranted on the same products. Although Christina indicated that it intends to enter the high end of the market shortly to compete with Shan's collections, the Tribunal is of the view that, based on the record, it would be premature to recommend tariff relief on textile products that Christina intends to import from Europe. In this regard, the Tribunal notes that Christina has not provided evidence to support a conclusion of imminent production of high-priced swimwear, such as orders on hand and actual sales. Therefore, it is unable, at present, to conclude that Christina is in a position to produce high-priced swimwear that would compete in the same market niche as Shan.

With regard to the issue of economic impact, the Tribunal, on the basis of the evidence, sees little cost other than the limited corresponding duty revenues forgone by the government, should tariff relief be continued. Should tariff relief be continued on the basis of the existing order, there may be some costs to Canadian knitters in forgone revenues, but overall benefits to Shan would be much higher than the costs. However, allowing Shan access to the *Designer Remission Order, 2001* would provide almost all the benefits currently available to Shan, while adding an element of flexibility that is absent under the existing order because of the quantitative limits. The *Designer Remission Order, 2001* would also render possible the sourcing, duty free, of high-priced black or white fabrics. These benefits could also be available to any other qualified designers. On the level of fairness, the Tribunal is of the view that this mechanism is greatly preferable to the current company-specific method by which tariff relief is provided to Shan.

In sum, the Tribunal finds that allowing tariff relief, under such an order, would enable Shan and other eligible swimwear designers to maintain their competitiveness in both the Canadian and export markets, while recognizing the unique set of circumstances in which they operate. Moreover, the specified floor price of \$14 per square metre would provide a measure of protection against swimwear producers obtaining lower-priced textile products offshore that may be available from Canadian textile producers. The Tribunal finds that tariff relief under such an order would continue to provide benefits in the form of reduced costs and additional flexibility to purchase new and high-priced fashionable textile products. Other than the corresponding duty revenues forgone by the government, the Tribunal does not believe that there will be any direct commercial costs associated with the continuation of the tariff relief.

RECOMMENDATION

In light of the foregoing, the Tribunal recommends to the Minister that tariff relief for Shan be continued. The Tribunal is of the view that the proper mechanism to implement this recommendation is to allow Shan, and other qualified designers of swimwear, to claim tariff relief under the *Designer Remission Order, 2001*, modified as appropriate to include women's swimsuits, "co-ordinated beachwear" and "co-ordinated accessories".

Patricia M. Close
Patricia M. Close
Presiding Member

APPENDIX I

Shan

Yearly Level of Imports for the Five-year Period

Product Category	Nov. 1, 1997, to Oct. 31, 1998	Nov. 1, 1998, to Oct. 31, 1999	Nov. 1, 1999, to Oct. 31, 2000	Nov. 1, 2000, to Oct. 31, 2001	Nov. 1, 2001, to Oct. 31, 2002
Knitted Fabrics	35,750	46,210	59,770	77,310	100,000
Narrow Woven Fabrics (kg)	500	500	500	500	500
Nonwovens (m ²)	3,000	3,900	5,070	6,590	8,570
Padding (m ²)	190	250	325	425	550
Tulles (kg)	300	350	400	450	500
Woven Fabrics of Cotton (m ²)	100	130	170	220	290
Woven Fabrics of Man-made Filaments and Man-made Staple Fibres (m ²)	1,400	1,820	2,370	3,080	4,000

APPENDIX II

Product Groupings Based on the 2002 Customs Tariff

TARIFF CLASSIFICATION	DESCRIPTION OF GOODS
1. Woven Fabrics of Cotton	
5208.31, 5208.32, 5208.33, 5208.39, 5208.41, 5208.42, 5208.43, 5208.49, 5208.51, 5208.52, 5208.53, 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, 5210.32, 5210.39, 5210.41, 5210.42, 5210.49, 5210.51, 5210.52, 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, 5212.14, 5212.15, 5212.23, 5212.24, 5212.25	Other woven fabrics of cotton, dyed, of yarns of different colours or printed.
2. Woven Fabrics of Man-Made Filaments and Man-Made Staple Fibres	
5407.10	Woven fabrics obtained from high-tenacity yarn of nylon or other polyamides or of polyesters.
5407.42, 5407.43, 5407.44, 5407.52, 5407.53, 5407.54, 5407.61, 5407.69	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.
5407.72, 5407.73, 5407.74	Other woven fabrics, dyed, of yarns of different colours or printed, containing 85 percent or more by weight of synthetic filaments.
5407.82, 5407.83, 5407.84	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.
5407.92, 5407.93, 5407.94	Other woven fabrics, dyed, of yarns of different colours or printed.
5408.22, 5408.23, 5408.24	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.
5408.32, 5408.33, 5408.34	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.
3. Nonwovens	
5603.92, 5603.93, 5603.94	Other nonwovens, whether or not impregnated, coated, covered or laminated, weighing more than 25 g/m ² .

4. Tulles	
58.04	Tulles 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 Nos. 60.02 to 60.06.
5. Narrow Woven Fabrics (ribbons)	
58.06	Narrow woven fabrics, other than goods of heading No. 58.07, excluding fabrics of tariff item No. 5806.40.00.
6. Padding	
5903.20.29	Other textile fabrics containing man-made fibres, impregnated, coated, covered or laminated with polyurethane, other than those of heading No. 59.02.
5906.91.90	Other knitted or crocheted rubberized textile fabrics, other than those of heading No. 59.02.
7. Knitted Fabrics	
60.04	Knitted or crocheted fabrics, of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading No. 60.01.
6005.22, 6005.23, 6005.24	Warp knit fabrics of cotton (including those made on galloon knitting machines), dyed, of yarns of different colours or printed, other than those of heading Nos. 60.01 to 60.04.
6005.32, 6005.33, 6005.34	Warp knit fabrics of synthetic fibres (including those made on galloon knitting machines), dyed, of yarns of different colours or printed, other than those of heading Nos. 60.01 to 60.04.
6005.42, 6005.43, 6005.44	Warp knit fabrics of artificial fibres (including those made on galloon knitting machines), dyed, of yarns of different colours or printed, other than those of heading Nos. 60.01 to 60.04.
6006.22, 6006.23, 6006.24	Other knitted or crocheted fabrics of cotton, dyed, of yarns of different colours or printed.
6006.31, 6006.32, 6006.33, 6006.34	Other knitted or crocheted fabrics of synthetic fibres, dyed, of yarns of different colours or printed.
6006.41, 6006.42, 6006.43, 6006.44	Other knitted or crocheted fabrics of artificial fibres, dyed, of yarns of different colours or printed.