



**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
COLORIDÉ INC.
REGARDING
NYLON FILAMENT YARN**

July 27, 2000

COLORIDÉ INC.

REQUEST NO.: TR-99-006

Tribunal Member: James A. Ogilvy, Presiding Member

Research Director: Réal Roy

Researcher: Paul R. Berlinguette

Statistician: Lise Lacombe

Counsel for the Tribunal: Gilles B. Legault

Registrar Officer: Claudette D. Friesen

Address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.¹ 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 with respect to those requests to the Minister.

Pursuant to the Minister's reference, the Tribunal received a request from Coloridé Inc. (Coloridé), of Louiseville, Quebec, on October 25, 1999, for the removal, for an indeterminate period of time, of the customs duty on importations, from all countries, of single filament yarn, solely of nylon, for use in the manufacture of hair colour charts.

On February 8, 2000, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation that was distributed and published in the February 19, 2000, edition of the *Canada Gazette*.² The textile input was described in the notice of commencement of investigation as "single filament yarn, solely of nylon, of tariff item No. 5402.41.14 or 5402.41.19, for use in the manufacture of hair colour charts" (the subject yarn).

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of identical or substitutable yarns. Questionnaires were also sent to potential users and importers of the subject yarn. A letter was sent to the Canada Customs and Revenue Agency (CCRA) requesting a complete description of the physical characteristics of the subject yarn, an opinion on whether the tariff relief could be administered and suggested wording should tariff relief be recommended. In addition, the Department of Foreign Affairs and International Trade (DFAIT) was asked to provide current information on any quantitative import restrictions on the subject yarn, and the Department of Industry was informed of the request and asked to provide any relevant comments. The Department of Finance was also informed of the request.

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

A public hearing was not held for this investigation.

PRODUCT INFORMATION

The product under investigation is single filament yarn, solely of nylon, for use in the manufacture of hair colour charts. Coloridé submitted the following three samples along with its request for tariff relief:

1. "Base" yarn: a single monofilament man-made (nylon) yarn, measuring approximately 55 decitex, with a diameter of approximately 0.1 mm; fully drawn, low tenacity yarn with no twist.
2. "Silk" yarn: a single man-made (nylon) yarn consisting of six filaments. The partially oriented filament yarn measures approximately 413 decitex; low tenacity yarn with no twist.
3. "Crystal" yarn: a single man-made (nylon) yarn consisting of 12 filaments; a low tenacity yarn of approximately 662 decitex; very little twist.

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

2. C. Gaz. 2000.I.540.

The subject yarn is imported from France and used in the manufacture of hair colour charts. Coloridé manufactures hair colour charts for the hair colouring industry. Each hair colour chart is different and unique. Coloridé reproduces the shades submitted by the hair coloration industry by mixing basic colours (spools of yarn) in specific proportions. The resulting locks of synthetic hair are attached to a special base which is then mounted on the hair colour chart.

The CCRA informed the Tribunal that the subject yarn is classified under tariff item No. 5402.41.14 or 5402.41.19 of the schedule to the *Customs Tariff*³ and is currently dutiable at 9.5 percent *ad valorem* under the MFN tariff and at 5.0 percent *ad valorem* under the GPT; it is duty free under the U.S. tariff, the Least Developed Country tariff, the Mexico tariff, the Canada-Israel Agreement tariff and the Chile tariff. The MFN rate of duty will be progressively lowered to 8.0 percent *ad valorem* by January 1, 2004.

The CCRA also informed the Tribunal that man-made monofilament yarn of 67 decitex or more, used in the manufacture of hair colour charts, is classified under tariff item No. 5404.10.10 for customs purposes and is allowed duty free entry under the MFN tariff.

Further to an appeal heard by the Tribunal,⁴ the main finished goods containing the subject yarn, that is, tufts or locks of synthetic hair, are classified under tariff item No. 6703.00.00 and are, therefore, allowed duty free entry into Canada.

REPRESENTATIONS

Position of Users of Single Filament Yarn

Requester

Coloridé, founded in 1981, is a wholly-owned subsidiary of George S.A. (France). Coloridé sells hair colour charts in North America and overseas. Coloridé submitted that identical or substitutable yarn is not produced in Canada and that the subject yarn has special characteristics, especially in terms of the diversity of colours.

Coloridé contended that the tariff relief would enable it to compete more effectively with European imports of hair colour charts, adding that this would also increase sales and create new jobs. Coloridé alleged that it exports substantial volumes of hair colour charts to the United States and Mexico and that tariff relief would offset the impact of changes made in the duty drawback program under the *North American Free Trade Agreement*.⁵

In its final submission to the Tribunal, Coloridé stated that, should someone decide to import yarns similar to the samples provided by Plastifil Inc. (Plastifil), a Canadian producer of nylon yarn, two of the three similar yarns could enter Canada duty free, based on the CCRA laboratory specifications. Coloridé submitted that Plastifil never sought to sell its yarns to Coloridé, adding that Plastifil is an affiliate of

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

4. *Coloridé v. DMNR* (25 February 2000), AP-99-037.

5. 32 I.L.M. 289 (effective: 1 January 1994) [hereinafter NAFTA]. Under NAFTA, a duty refund system called « the lesser-of concept » replaced the drawback regulations for Canada-United States trade. Under this new concept, the refund is equal to one of the following amounts, whichever is less:

- (a) the duties paid on the goods imported into Canada; or
- (b) the duties paid on the finished goods when exported to the United States.

Aspasie Inc. (Aspasie), a competitor of Coloridé, and that both companies are run by the same people. Considering that Plastifil is a new business, Coloridé doubts that Plastifil has the capacity to meet its yarn requirements in terms of quality, volume and delivery lead time. Coloridé explained that the considerable difference in price between the subject yarn and the allegedly identical or substitutable yarn is due to transportation costs, exchange rates and the superior quality of the subject yarn. In light of the degree of affiliation between the two companies and the cost of the subject yarn, Coloridé argued that, should tariff relief be allowed, it would not translate into Aspasie purchasing yarn from Europe and job loss for Plastifil.

Furthermore, Coloridé submitted that its sister companies in Europe have their own territories, which are separate from its own, and that it competes with several foreign companies. Although Coloridé and Aspasie sometimes sell hair colour charts to the same clients, Coloridé stated that other clients choose on the basis of the quality, originality, price and delivery time of the finished product. Given that the main finished goods manufactured using the subject yarn, i.e., tufts or locks of synthetic hair, enter Canada duty free, Coloridé pointed out that there is a tariff anomaly between the locks of synthetic hair and the subject yarn and that this anomaly would be corrected should tariff relief be granted.

Aspasie

Aspasie, of Saint-Barnabé Nord, Quebec, has been manufacturing hair colour charts since 1988. A significant number of employees, half of which work from home, are directly involved in the production of hair colour charts. Aspasie exports most of its hair colour charts to over 60 countries worldwide. For a year now, Aspasie has been purchasing nylon monofilament yarn, either batch dyed or in its natural colour, from Plastifil, located in Trois-Rivières, Quebec. Aspasie is also equipped to dye the nylon yarn in several colours.

Aspasie opposed the request for tariff relief on the grounds that there are producers of identical or substitutable yarns in Canada and the United States that have made enormous investments in the equipment required to produce this type of yarn. Furthermore, Aspasie pointed out that the subject yarn is duty free under the U.S. tariff when imported from that country.

Since Coloridé and Aspasie are the only North American producers of hair colour charts and they supply the same clientele, Aspasie argued that the tariff relief would give Coloridé an unfair competitive advantage, potentially causing Aspasie to lose one or more major clients, some of which represent a substantial portion of its sales. Consequently, Aspasie contended that the tariff relief could cause jobs to be lost.

As for Coloridé's argument that it wishes to compete more effectively against hair colour charts imported from Europe, Aspasie contends that the foreign producers are not really competitors but sister companies. Aspasie further contended that those companies do not pose a serious threat in North and South America due to high transportation costs, customs duties with the United States and Mexico and higher wages in Europe, especially in France and Germany, where the major producers of hair colour charts are located.

Domestic Producer of Allegedly Identical or Substitutable Yarns

Plastifil⁶

Plastifil, of Trois-Rivières, employs a staff of seven. Since 1999, it has produced nylon yarn used to manufacture hair colour charts. This company also manufactures plastic by injection. Plastifil submitted that it intends to develop other products, such as fishing yarn and sewing thread, in order to make its extrusion line more profitable, with a view to investing in another eventually.

Plastifil affirmed that it manufactures yarn⁷ with the same characteristics as the subject yarn and that it has the ability to manufacture yarn that is similar or superior to the samples provided by Coloridé.

Plastifil opposed the request for tariff relief on the grounds that it is capable of providing nylon yarn to other clients if there is a demand. According to Plastifil, such relief would only lower Coloridé's prices, resulting in fiercer competition for Aspasia. Plastifil contended that, should Aspasia buy less yarn, Plastifil's investments would be threatened, putting its entire production at risk, as well as the jobs involved. Plastifil added that Coloridé purchases its yarn from Europe and has created no jobs in this industry segment in Canada.

Other Submissions

Canatex Industries, of Montréal, Quebec, Consoltex Inc., of Ville St.-Laurent, Quebec, and Rentex Inc., of Montréal, stated that they neither manufacture nor import the subject yarn and, therefore, elected not to participate in this investigation.

OTHER INFORMATION

DFAIT informed the Tribunal that Canada currently maintains quota restraints on nylon filament yarn imported from the Republic of Korea and Taiwan. According to DFAIT, the subject yarn is subject to quantitative import restrictions under tariff item Nos. 5402.41.14 and 5402.41.19. Bilateral agreements, which provide for these restrictions, have existed since 1978 between the Government of Canada and the Government of the Republic of Korea and the Taiwan Textile Federation. DFAIT explained that quota restraints on nylon filament yarn were implemented to protect Canadian manufacturers from large volumes and low prices of exports from these countries.

DFAIT indicated that it would consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove the customs duties on the basis of non-availability. Ex-quota treatment will only be granted in cases where it can be demonstrated that there is an extra charge for using products under quota or where goods are not otherwise available in Canada.

The CCRA indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief on the subject yarn.

-
6. Plastifil and Aspasia are run by the same administrators. Furthermore, there are family ties between those people. However, in a letter dated April 4, 2000, Plastifil indicated that the two entities are independent of one another since they have separate charters and each is headed by a different president.
 7. As it stands, Plastifil only produces monofilament yarn.

ANALYSIS

The terms of reference direct the Tribunal to evaluate the economic impact that reducing or removing a tariff would have on domestic textile producers and downstream producers and, in so doing, to consider all relevant factors, such as the substitutability of the subject yarn with a domestic yarn, the ability of domestic yarn producers to serve Canadian downstream industries and the competitiveness of those downstream industries at home and abroad. Consequently, 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.

Coloridé's request is for tariff relief on nylon yarn used to manufacture hair colour charts. Based on the information gathered by the Tribunal, there are two hair colour chart manufacturers in North America, i.e., Coloridé and Aspasia. Coloridé obtains its textile inputs from France whereas its competitor, Aspasia, purchases its yarn from Plastifil, a Canadian company. The main finished goods manufactured using this yarn are tufts or locks of artificial hair, mounted in displays or books, generally referred to as hair colour charts. These hair colour charts are purchased by companies selling hair colour dyes, such as Clairol, Cosmair, L'Oréal and Wella, that distribute them to retailers of hair colour dyes.

On the one hand, Coloridé argued that no identical or substitutable yarns are available in Canada. On the other hand, Aspasia and Plastifil opposed Coloridé's request on the grounds that, in their view, there are Canadian and U.S. manufacturers that produce similar yarn. On this point, Plastifil stated that it manufactures yarn with the same characteristics as the subject yarn and that it has the ability to manufacture yarn very similar or superior to the samples provided by Coloridé.

During the investigation, Plastifil submitted three samples as evidence, which, it alleged, could be used by Coloridé to produce tufts or locks of synthetic hair. According to the CCRA, two of these samples,⁸ measuring 68 and 68.5 decitex,⁹ could be classified, for customs purposes, under classification No. 5404.10.10.10 and would be duty free under the MFN tariff. A third sample,¹⁰ measuring 66.6 decitex, would be subject to the same tariff treatment as the subject yarn, i.e., 9.5 percent under the MFN tariff. The CCRA pointed out that the samples are subject to different tariff treatments because their decitex measurements are different. Heading No. 54.02 covers synthetic filament yarns (other than sewing threads), including synthetic monofilaments measuring less than 67 decitex, whereas heading No. 54.04 covers synthetic monofilaments of 67 decitex or more. In addition, the CCRA pointed out that the three Plastifil yarn samples measured very close to 67 decitex. Considering an admitted margin of error of ± 4.0 percent, upon analysis, these yarns might be classified under either of these tariff items.

In examining the issue of substitutability, the Tribunal mainly considered the difference in characteristics between the subject yarn and the yarns produced by Plastifil. As previously mentioned, Coloridé submitted three samples with its request for tariff relief, i.e., a monofilament, a 6-filament yarn and a 12-filament yarn. However, the information provided by Coloridé indicates that it mainly imports single monofilament measuring approximately 55 decitex.¹¹ After carefully examining the samples provided by Coloridé and Plastifil, more specifically the monofilament yarns, and taking into account the CCRA's observations, the Tribunal is of the opinion that, even if Plastifil does not presently produce yarn with

8. Tribunal Exhibits TR-99-006-11.2A and TR-99-006-11.2C.

9. One decitex is one tenth of a tex unit. Tex is a unit for expressing linear density, equal to the weight in grams of one kilometre of yarn.

10. Tribunal Exhibit TR-99-006-11.2B.

11. Tribunal Exhibit TR-99-006-27 (protected) at 8.

exactly the same characteristics as the subject yarn, i.e., single monofilament yarn measuring approximately 55 decitex, there is no reason why it would not be able to produce a yarn that is identical to or substitutable for the subject yarn, since it has the technology and equipment to do so. Even if the subject yarn is considerably more expensive than the allegedly substitutable yarn that Plastifil produces, which might seriously cast a doubt as to whether the two products are indeed substitutable, the Tribunal deems that the technical makeup and description of the allegedly substitutable yarn are elements of primary importance in this case. The Tribunal accordingly finds that Plastifil could produce a substitutable yarn if the demand warranted it.

The Tribunal proceeded to examine the issue of affiliation between Aspasia and Plastifil. In light of the information before it, the Tribunal finds that the special relationship between Aspasia and Plastifil explains why Aspasia does not seek to benefit from the duty-free privileges that exist for certain synthetic monofilaments of 67 decitex or more. Where Coloridé is concerned, the Tribunal notes that Plastifil did not seek to provide its product to Coloridé. Furthermore, the Tribunal notes that an appeal heard on December 6, 1999,¹² revealed that the main finished goods manufactured using the subject yarn, i.e., tufts or locks of synthetic hair, are classified under tariff item No. 6703.00.00 and, consequently, enter Canada duty free. Therefore, Coloridé is in a situation where it still pays customs duties on inputs that it imports to manufacture locks of hair, whereas, the finished goods can be imported duty free. In the Tribunal's view, this tariff anomaly could lead to a loss of jobs at Coloridé should the company one day decide to take advantage of this situation by importing locks of hair rather than producing them domestically.

Plastifil argued that tariff relief on the subject yarn would only lower Coloridé's prices and make the competition fiercer for Aspasia. As a result, Aspasia would purchase less yarn from Plastifil, thereby compromising the company's investments, its output and related jobs. Although there was limited information available on this issue, the Tribunal notes that the duty on the subject yarn represents a very small percentage of the wholesale price of hair colour charts.¹³ Therefore, in the Tribunal's view, should prices need to be lowered to match the new Coloridé prices, the reduction would certainly be minimal. Consequently, the Tribunal granted little weight to Plastifil's argument.

Based on the information on file, it appears unlikely that Plastifil could, in the foreseeable future, sell a given volume of yarn to Coloridé, even if the customs duty were to remain in effect. Plastifil started its operations over one year ago and yet only provides monofilament yarn to Aspasia. Moreover, the Tribunal notes that, to make its extrusion line more profitable, Plastifil seems more interested in exploiting other markets, such as fishing yarn and sewing thread. Plastifil has also just acquired the equipment needed to produce various accessories used in the hair colouring business. Consequently, the Tribunal is of the view that the limited costs which the domestic industry may eventually incur as a result of this tariff relief would be more than offset by future gains for Coloridé. Furthermore, the Tribunal is conscious of the anomaly that exists in terms of tariff treatment on certain nylon yarns and locks of artificial hair. Synthetic monofilaments of 67 decitex or more and locks of synthetic hair already benefit from duty-free privileges. Therefore, there clearly exists a precedent of tariff relief in the area of hair colour locks and charts.

Moreover, the Tribunal deems that any benefits which Coloridé is likely to gain, should tariff relief be granted, would represent net economic gains for Canada. The relief could also lead to indirect gains, such as lower unit production costs for instance.

12. *Supra* note 4.

13. *Supra* note 11.

RECOMMENDATION

The Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries of single filament yarn, solely of nylon, of subheading No. 5402.41, for use in the manufacture of hair colour charts.

James A. Ogilvy
James A. Ogilvy
Presiding Member