



**REPORT TO
THE MINISTER OF FINANCE**

**RECONSIDERATION OF RECOMMENDATION
MADE IN REVIEW NO. TA-2002-001 REGARDING
CERTAIN TEXTILE PRODUCTS IMPORTED BY
LES COLLECTIONS SHAN INC.**

MAY 26, 2003

LES COLLECTIONS SHAN INC.

REVIEW NO. TA-2002-001A

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INTRODUCTION

On December 2, 2002, Les Collections Shan Inc. (Shan) filed a request asking the Canadian International Trade Tribunal (the Tribunal) to reconsider its recommendation made on October 24, 2002, to the Minister of Finance (the Minister), in Review No. TA-2002-001. The Tribunal had recommended that tariff relief for Shan be continued. The Tribunal was of the view, however, that the proper mechanism to implement its recommendation was to allow Shan, and other qualified designers of swimwear, to claim tariff relief under the *Designer Remission Order, 2001* (Order in Council P.C. 2001-2283), modified as appropriate to include women's swimsuits, "co-ordinated beachwear" and "co-ordinated accessories".

In making its recommendation to the Minister, the Tribunal relied on import data that had been provided by Shan, covering the period from November 1, 2001, to October 31, 2002. These data were reported in the Tribunal's protected staff investigation report, a copy of which was provided to Shan during the review investigation. Shan made no comments on these data at that time.

In its request for reconsideration, Shan submitted that the Tribunal should: (a) disregard the evidence that Shan had originally submitted to the Tribunal in response to the Requester's Questionnaire and use, instead, for its economic analysis, the much lower value import data that it subsequently submitted with its request for reconsideration; and (b) accept Shan's rebuttal evidence regarding the submissions filed by domestic suppliers about their ability to supply Shan. Shan requested that *Les Collections Shan Remission Order, 1997* (Order in Council P.C. 1997-1668)¹ be maintained without limitation to quantities and upgraded further to include black or white textile inputs.

At the Tribunal's request, Shan submitted, on February 11, 2003, additional information with supporting documents concerning its imports of certain textile products for the period from November 1, 2001, to October 31, 2002. In this regard, the average value of some of its imports was significantly lower than that provided during the original review investigation. Consequently, the Tribunal gave notice on March 18, 2003,² that it had decided to reconsider its recommendation to the Minister, but **only** as it related to the new evidence provided by Shan on its imports of textile products. The Tribunal indicated that the review would be conducted by way of written submissions.

As part of its reconsideration, a staff investigation report summarizing, *inter alia*, some of the new information received by Shan, was distributed on March 21, 2003, to parties that filed notices of appearance with the Tribunal in Review No. TA-2002-001. Three parties filed submissions with regard to the reconsideration: The Nalpac Company (Nalpac), Tricots Liesse (1983) Inc. (Liesse) and Shan.

REPRESENTATIONS

Nalpac

Nalpac, a domestic producer of circular-knit and warp-knit fabrics, opposed the suggestion that duty-free import privileges should go beyond the limits of the *Designer Remission Order, 2001*. Nalpac indicated that, under the Tribunal's existing recommendation, Shan would have unlimited access to duty-free fabrics of all kinds valued at \$14 or more per square metre. Nalpac stated that it had achieved substantial increases in the sale of its own knitted fabrics to the swimwear market in 2002. Nalpac also indicated that Agmont Inc. (Agmont), a major producer of circular-knit fabrics, recently filed a notice of

1. Between November 1, 1997, and October 31, 2002, Shan was granted tariff relief for selected textile inputs through *Les Collections Shan Remission Order, 1997*.
2. C.Gaz. 2003.I.904.

intention to make a proposal under the *Bankruptcy and Insolvency Act* and that, consequently, Nalpac is co-operating closely with Agmont with a view to taking over the production and marketing of Agmont's swimwear fabrics. Nalpac submitted that the swimwear fabrics produced and marketed by Nalpac and Agmont, which include a broad variety of primary fabrics and linings, would be threatened by Shan's latest proposal.

Liesse

Liesse, a domestic producer of circular-knit fabrics specializing in the manufacture of swimwear fabrics, submitted that Shan's proposal is without merit and that the Tribunal's recommendation of October 24, 2002, should stand without amendment. Liesse stated that, within a few years of *Les Collections Shan Remission Order, 1997*, other apparel designers made demands for privileged access to imported fabrics and that the result, after a long debate, was the *Designer Remission Order, 2001*.

Liesse submitted that Shan's case for tariff relief is not strengthened by the new evidence of lower-value fabric imports, which have resulted in an increased margin between the wholesale price of Shan swimwear and the cost of the fabrics used. Liesse stated that, if the Tribunal is to assume that Shan continues in the high-end niche on which it based its demands in 1997, then, the lower the price of the fabric, the lower the cost of the tariff, and the lower the tariff, the weaker the case for relief.

Liesse submitted that, should a designer find a high-quality fabric at a low price, the duty would not represent a significant percentage of the total cost of a garment and, as such, the case for tariff relief would be weak. Liesse also submitted that, if the fabrics imported by Shan at values below \$14 per square metre actually represent a significant percentage of the total cost of apparel made by Shan, this might be because the total cost or wholesale price of Shan products is lower than hitherto believed by the Tribunal and parties.

Liesse submitted that, if Shan still commands the same high wholesale prices for swimwear as in the past, while the European fabrics that it uses have declined in price, then one can only conclude that the case for tariff relief is weak. If the average wholesale price of swimwear has declined, however, it might be argued that the relative cost of the imported fabrics calls for relief, but it would also indicate that there has already been a move by Shan "down-market" into price ranges where other swimwear producers compete and a uniqueness claim would no longer be tenable.

Liesse submitted that granting Shan's new request would mean that it would not pay duty, no matter what fabrics or quantities of fabrics were imported, and no matter what fabric producers were injured or what competitors exist in the swimwear industry.

Shan

Shan submitted that Nalpac and Liesse have no grounds to oppose this reconsideration.

With respect to prices, Shan submitted that Nalpac's unit prices cannot be compared with those of European manufacturers, which are developing hundreds of new patterns and blends every year for the designer industry only. Shan indicated that European suppliers are able to provide matching colours for any kind of co-ordinated fabric within days. This, according to Shan, allows for lower prices. Shan stated that Canadian textile manufacturers are unable to guarantee that their fabrics match the colours of co-ordinated European fabrics, printed or dyed.

Shan stated that past evidence shows that the prices of its swimsuits and co-ordinated beachwear are in the high end of the spectrum. Therefore, any linkage made by Liesse between low prices paid for fabrics and the possibility of selling Shan's products at lower prices is unjustified. Moreover, Shan indicated that the prices for its *Shan* collection are now higher and that its *S by Shan* line of products has adopted the old pricing levels of the *Shan* collection.

Shan submitted that the spread between swimwear prices and the cost of fabrics is totally irrelevant. Shan also submitted that the Tribunal's recommendation in 1997 was not based on fabric cost or pricing, but on Shan's uniqueness, the unavailability of fabric and as a "protection" against a supposed possibility for Shan to extend its market share to low-end swimsuits. Shan stated that the issue is not only about high-end prices of Shan's collection for lower-cost fabrics but also about design, innovation, quality assembling, expert configuration and international reputation. Shan submitted that, above all, it is seeking quality, reliability and partnership with a supplier, at any price, when appropriate. Shan submitted that low-priced fabrics could also be of high quality.

Shan stated that European fabric manufacturers offer prices that are comparable to Canadian prices because they are competing fiercely for any designer niche. Shan submitted that, since there is no relationship between the price of swimwear, including co-ordinated beachwear, and the cost of fabrics, the need for tariff relief should not be linked to the price paid for the fabrics.

Shan submitted that, had the Tribunal considered Shan's request for the continuation of the tariff relief with the correct information, the Tribunal's analysis would have been based on small volumes of high-quality fabrics from Europe, available at prices comparable to those offered by Canadian textile manufacturers. Consequently, the rationale to include Shan in the *Designer Remission Order, 2001* would have been difficult to justify, even with sustained opposition from the textile industry. Shan submitted that the *Designer Remission Order, 2001* imposes several limits and administrative barriers with which most designers cannot afford to comply.

Shan submitted that it would lose significant benefits under the *Designer Remission Order, 2001*, mostly in the category of knitted fabrics.

Shan submitted that continued and improved tariff relief would allow it to: (1) manage its risk better; (2) develop its market niche better without hurting anyone in Canada; (3) build a strong international reputation; (4) increase exports; and (5) improve the image of Canadian design abroad.

Shan also submitted that, in the last five years, it has not adversely affected Canadian textile manufacturers or tried to sell low- and medium-priced swimwear. Shan stated that it has respected all its obligations under *Les Collections Shan Remission Order, 1997* and that, because it serves a very specific and restrictive market niche, it does not represent any danger to anyone in Canada and that this will not change in the future.

In light of the foregoing, Shan submitted that the appropriate thing to do would be to renew and simplify *Les Collections Shan Remission Order, 1997* along the following lines:

- Allow any textile input to be included, from Chapters 51 through 60 of the *Customs Tariff*, for the manufacture of the same swimsuits and co-ordinated beachwear and accessories
- Eliminate quantitative limits for fabric groupings and exclusions of black or white fabrics
- Impose limits for fabrics having a width of 30 cm or more (those that are bought in linear or square metres)

- Limit importations of knitted fabrics to 80 percent of the total quantity of products imported for a particular year

Shan also submitted that a review should take place after a five-year period to determine whether the order is still justified.

DECISION

As noted above, the Tribunal gave notice, on March 18, 2003, that it had decided to reconsider its recommendation to the Minister, but **only** as it related to the new evidence provided by Shan on its imports of textile products and its effects on pricing. In its reconsideration, the Tribunal must determine if the new information provided by Shan covering the period from November 1, 2001, to October 31, 2002, is of such a nature as to invalidate the Tribunal's previous recommendation. In carrying out its examination, the Tribunal estimated the direct benefits for Shan on the textile products under *Les Collections Shan Remission Order, 1997*, which specified quantitative limits and excluded fabrics of a uniform solid colour of black or white. The Tribunal also used the new information to estimate the potential benefits for Shan, if it had been subject to the *Designer Remission Order, 2001*, with its specified floor price of \$14 per square metre for fabrics.³

On the basis of its analysis of the information provided for the November 1, 2001, to October 31, 2002, period, the Tribunal has determined that the *Designer Remission Order, 2001* would not have provided the same level of benefit to Shan as *Les Collections Shan Remission Order, 1997*, especially in relation to knitted fabrics. However, the Tribunal is of the view that the *Designer Remission Order, 2001*, if amended specifically to cover swimsuit designers such as Shan, would still provide significant benefits. The Tribunal sees no reason why Shan should not be able to continue to operate under the *Designer Remission Order, 2001* as an upscale designer serving the needs of the high-end market in swimwear and co-ordinated beachwear and accessories. Evidence provided by Shan shows that it continues to purchase high-quality fabrics from Europe at prices much higher than \$14 per square metre, albeit at smaller volumes than originally reported, so as to continue to serve its designer market niche. If the knitted fabrics have indeed recently come down in price because of the competition in Europe, then it is also the case that Shan does not require tariff relief to the extent that it did in the past.

Moreover, as indicated in the Tribunal's recommendation of October 24, 2002, the *Designer Remission Order, 2001* would add an element of flexibility that is absent under the *Les Collections Shan Remission Order, 1997* because of the quantitative limits of the latter. The *Designer Remission Order, 2001* would also allow the duty-free sourcing of high-priced black or white fabrics. These benefits could also be available to any other qualified swimwear designer. On the level of fairness, the Tribunal is of the view that this mechanism is greatly preferable to the company-specific method by which tariff relief is provided under *Les Collections Shan Remission Order, 1997*.

The Tribunal is also of the view that, since tariff relief was granted in 1997, Canadian textile producers have achieved a certain degree of market acceptance for high-quality fabrics. Although these producers may not be in a position to fully respond to Shan's requirements at this time, the Tribunal believes that, in the near future, the domestic industry's product range will expand and its ability to serve the high-end swimwear market will increase. However, as *Les Collections Shan Remission Order, 1997* now

3. Narrow woven fabrics and tulle were excluded from this analysis because the Canada Customs and Revenue Agency would need to make specific determinations on whether these items could be considered under the said order.

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 price. In these circumstances, the Tribunal finds that the *Designer Remission Order, 2001*, amended to include swimwear designers, would be a more appropriate mechanism for Shan and any other recognized swimwear designer to achieve duty-free access to a wide range of higher-cost fabrics.

On balance, the Tribunal is of the opinion that tariff relief, under the *Designer Remission Order, 2001*, would enable Shan and other eligible swimwear designers to maintain their competitiveness in both the Canadian and export markets. Moreover, the specified floor price of \$14 per square metre would provide Canadian textile producers the incentive and opportunity to further develop high-quality fabrics. Should business circumstances change in the future and the modified *Designer Remission Order, 2001* no longer respond to the needs of the swimwear industry, the Minister could always look into establishing new arrangements for the industry under the *Designer Remission Order, 2001*.

Therefore, on the basis of its examination of all the information and submissions in this review, the Tribunal reaffirms the recommendation that it made in its report to the Minister on October 24, 2002, i.e. that tariff relief for Shan be continued and 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 to include women's swimsuits, "co-ordinated beachwear" and "co-ordinated accessories".

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