



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Textiles

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## RECOMMENDATION

Request No. TR-2003-002

Sunshine Mills Inc.

(Certain Combed Ring-spun Cotton  
Yarns)

*Recommendation issued  
Friday, August 6, 2004*

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## REPORT TO THE MINISTER OF FINANCE

### INTRODUCTION

1. On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference<sup>1</sup> from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.<sup>2</sup> The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.

2. On October 2, 2003, pursuant to the Minister's reference, the Tribunal received a request from Sunshine Mills Inc. (Sunshine), of Toronto, Ontario, for the immediate removal, for an indeterminate period of time, of the customs duty on importations from all countries of certain combed ring-spun cotton yarns for use in the manufacture of woven fabrics. Sunshine also sought tariff relief retroactive to March 1, 2002.

3. On January 27, 2004, being satisfied that the request was properly documented, the Tribunal issued a notice of commencement of investigation,<sup>3</sup> which was distributed to known interested parties. The yarn under investigation was described in the notice as "cotton yarn (other than sewing thread), single, solely of cotton, combed, not put up for retail sale, ring-spun, unbleached, measuring less than 166 decitex,<sup>[4]</sup> of subheading No. 5205.24, 5205.26 or 5205.27, for use in the manufacture of woven fabrics" (the subject yarn).

4. As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of yarns identical to or substitutable for the subject yarn. A request for information was also sent to potential users and importers of the subject yarn. A letter was sent to the Canada Customs and Revenue Agency (CCRA), now the Canada Border Services Agency, requesting a complete description of the physical characteristics of the samples submitted by Sunshine, an opinion on whether the requested tariff relief would be administrable, and suggested wording to describe the subject yarn, should tariff relief be recommended. Letters were also sent to the Department of International Trade (DIT) and the Department of Industry, requesting information that could assist the Tribunal in its investigation.

5. A staff investigation report, summarizing the information received from the CCRA, DIT, Sunshine and Atlantic Fine Yarns Inc. (Atlantic), was provided to those that had become parties to the proceedings by filing notices of appearance in the investigation. Following distribution of the staff investigation report, Atlantic and Sunshine filed submissions with the Tribunal.

6. Given that there was sufficient information on the record, the Tribunal decided that a public hearing was not required for this investigation.

### PRODUCT INFORMATION

7. Although the request for tariff relief covers yarns imported from all countries, Sunshine imports the subject yarn from India, Pakistan and Egypt. It submitted three samples of single, unbleached, ring-spun yarn of combed fibres, measuring 152 decitex, 116 decitex and 98 decitex, with its request for tariff relief.

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1. The terms of reference were last modified on January 13, 2004.

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

3. C. Gaz. 2004.I.223.

4. Cotton count finer than 36/1.

8. According to Sunshine, the subject yarn is required for high-efficiency warping<sup>5</sup> and high-speed, air-jet weaving. In general terms, the production process entails the following steps:

- The yarn, received on cones, is set up as a warping creel<sup>6</sup> and wound on large (2,200-mm-wide) metal cylinders called warp beams.
- Up to 28 warp beams are assembled on a sizing machine, where sizing chemicals<sup>7</sup> are applied to strengthen the yarn for high-speed weaving.
- The sized warp beams are then put on the high-speed, air-jet weaving machines (Picanol Omni Plus), where the weft yarn is inserted in a direction perpendicular to the warp yarn using compressed air and is thereby woven into greige fabric.
- The fabric is wound on large rolls of 500 to 5,000 metres, depending on customer requirements, and is then inspected for defects, packed and shipped.

Sunshine indicated that none of the above-mentioned processes are subcontracted.

9. As of January 1, 2004, the subject yarn, classified for customs purposes under tariff item No. 5205.24.90, 5205.26.90 or 5205.27.90 of the schedule to the *Customs Tariff*,<sup>8</sup> is dutiable at 8.0 percent *ad valorem* under the Most-Favoured-Nation (MFN) Tariff and at 5.5 percent under the Costa Rica Tariff, and is duty free under the United States Tariff, the Least Developed Country Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

## REPRESENTATIONS

### Weaving Industry

#### Sunshine

10. Sunshine has been producing greige fabrics of 100 percent cotton and polyester/cotton blends since May 2002 at its plant located in Tracadie-Sheila, New Brunswick. It indicated that it is a start-up company in a remote area. The fabrics produced by Sunshine are used primarily in the manufacture of home furnishings.

11. Sunshine claimed that there are no identical or substitutable yarns available from Canadian sources. It indicated that the removal of the customs duty on imports of the subject yarn would allow it to compete for market share with Asian fabric manufacturers that have access to the subject yarn, either as local production or as duty-free imports. It stated that Asian countries have the further advantages of cheap labour and government incentives and subsidies. It alleged that, because of the duties on the subject yarn, it has not been able to sell fabrics in the Canadian market. Moreover, due to its recent entry as a Canadian

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5. Warping is the operation of winding warp yarns onto a beam, usually in preparation for weaving.

6. A creel is a framework arranged to hold yarns so that many ends can be withdrawn smoothly and evenly without tangling.

7. A generic term for compounds that are applied to warp yarn to bind the fibre together and stiffen the yarn to provide abrasion resistance during weaving.

8. S.C. 1997, c. 36.

manufacturer, Sunshine has access to only a small amount of tariff preference levels (TPLs)<sup>9</sup> and, as a result, must pay duties on 80 percent of its exports to the United States.

12. Sunshine indicated that, before commencing operations, it believed that there were no duties on imports of 100 percent cotton yarn in counts of 32/1 and finer used in the weaving<sup>10</sup> of greige fabrics. It stated that this point was crucial, since its feasibility study was based on the production of greige fabrics with imported yarn in fine counts. Sunshine stated that the duties on the subject yarn have had a serious negative impact on its profitability, particularly in the current economic situation.

13. Sunshine stated that tariff relief would allow it to be more competitive in the export market and in the more price-sensitive Canadian market in relation to cheaper imports of fabrics. It also indicated that its sales would increase in both markets and that potential expansion and job opportunities at its manufacturing facility could result. Sunshine stated that it currently employs 110 people in a high-unemployment area of New Brunswick and that these jobs are at risk.

14. In its submission of April 26, 2004, Sunshine stated that, after repeated efforts to obtain identical or substitutable yarns from Canadian sources, the evidence clearly indicates that such yarns are not produced in Canada. In November 2002 and March 2003, it asked Atlantic to quote prices for 100 percent cotton yarn in fine counts, but was unsuccessful in obtaining quotes. On April 10, 2003, Sunshine placed an advertisement in a major Canadian newspaper requesting expressions of interest from Canadian manufacturers for the supply of weaving yarns, but none came forward. In June 2003, it asked the Canadian Textiles Institute (CTI) which Canadian yarn manufacturers might be able to supply identical or substitutable yarns. The CTI identified two potential suppliers: Atlantic and Cavalier Textiles.<sup>11</sup> Sunshine was not successful in its efforts to obtain such yarns from these suppliers. Moreover, it submitted, there is no indication that supply will be available in the foreseeable future. It submitted that it would consider purchasing identical or substitutable yarns from Canadian sources, but that, in light of the foregoing, it has no choice but to import the subject yarn and pay the duties.

15. Sunshine submitted that the removal of tariffs on the subject yarn would not result in any cost to Atlantic since it does not produce identical or substitutable yarns in commercially available quantities, nor is it a supplier of such yarns. Therefore, Sunshine submitted, Atlantic cannot lose sales of yarns to Sunshine or any other producer of woven greige fabrics in Canada. It also submitted that tariff relief would not have any effect on Atlantic's planned expansion. Sunshine submitted that the evidence demonstrates that Atlantic has not taken any steps to produce identical or substitutable yarns, despite repeated requests for quotes from Sunshine. It submitted that, although Atlantic has suggested that it could convert its capacity to produce identical or substitutable yarns, there is no evidence that it has done so or that it has taken steps to promote

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9. The *North American Free Trade Agreement*, 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*] provides preferential tariff treatment for certain quantities of textile goods despite their incorporation of non-North-American (i.e. non-originating) inputs. This preferential tariff treatment takes the form of Canadian TPLs. TPLs permit the import of a fixed quantity of certain textile goods into Canada, the United States and Mexico at the *NAFTA* rate of duty. Goods entering a *NAFTA* country in quantities above the TPLs are subject to the higher MFN rate of duty. A new method of determining duty drawback, called "the lesser-of concept", was introduced in *NAFTA*. Under this new scheme, the duty drawback, or 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.
10. Indeterminate tariff relief exists for certain combed or carded ring-spun yarns (count of 31/1 and finer) for use in the manufacture of knitted fabrics or knitted garments.
11. Cavalier Textiles closed its plant in July 2003.

or demonstrate its capability to produce such yarns. According to Sunshine, the evidence indicates that Atlantic only produces 100 percent cotton and polyester/cotton ring-spun yarns of lower counts, which are not covered by Sunshine's request.

16. Sunshine submitted that the payment of duties on the subject yarn has had a serious negative impact on its profitability. It submitted that, since March 1, 2002, the payment of duties has seriously affected its cash flow and has made it difficult to keep an inventory of the subject yarn. Sunshine submitted that, at certain times, it has had to close its plant because of the lack of cash flow and inventory of yarn. It submitted that these are exceptional circumstances that warrant retroactive tariff relief and that failure to receive such relief would seriously jeopardize sustained production at its plant, as well as its financial viability and employment.

17. In its reply submission,<sup>12</sup> Sunshine submitted that Atlantic did not provide price quotes for 100 percent cotton yarn in fine counts when requested. It submitted that Atlantic's participation in the Tribunal's January 2002 and February 2004 investigations does not demonstrate Atlantic's intention to produce identical or substitutable yarns, as the investigations dealt with combed or carded ring-spun cotton and polyester/cotton yarns for use in the manufacture of knitted fabrics and garments. Moreover, the Tribunal found that Atlantic was unable to produce fine yarns for knitted fabrics and garments. Sunshine submitted that the subject of this investigation is ring-spun cotton yarn for weaving and that Atlantic's purported excuse for refusing to supply identical or substitutable yarns to Sunshine, i.e. because it is unable to obtain insurance, is a purely commercial matter that has no bearing on this investigation. Sunshine submitted that, if Atlantic wanted to supply Sunshine, it could have done so through other commercial credit arrangements, such as advances against orders, cash before delivery or letters of credit. Sunshine submitted that Atlantic is not interested in obtaining its business, as it has not vigorously pursued its business by providing competitive prices and workable commercial terms, even for non-subject yarn.

## **Yarn Industry**

### Atlantic

18. Atlantic, of Mississauga, Ontario, was founded in 2000 to produce ring-spun yarns in Pokemouche, New Brunswick. Its ring-spinning facility is to be completed in four phases. Phase 1 production commenced on October 15, 2001. According to Atlantic, the machinery in Phase 1 is capable of producing 14 million kilograms per year of 100 percent cotton and polyester/cotton ring-spun yarns with counts ranging from 130s to 6s in both combed and carded yarns. Atlantic indicated that, subject to the viability of Phase 1, it plans to embark on Phase 2 at an additional cost of \$70 to \$80 million. Phase 2 would provide an additional 14 million kilograms of production capacity per year of 100 percent cotton and polyester/cotton ring-spun yarns with counts ranging from 130s to 6s.

19. Atlantic stated that, if financial results were achieved from Phases 1 and 2 as anticipated, Phases 3 and 4 would be completed within five years. This would add ring-spun yarn production facilities of between 250,000 and 300,000 square feet. Atlantic also indicated that the potential for expansion of the market for ring-spun yarns in North America is enormous.

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12. On April 26, 2004, Sunshine filed a response submission with the Tribunal, which included some documents (Tabs 1, 2 and 3) regarding its efforts to obtain the subject yarn from Canadian sources. The Tribunal considered these documents to be new information. Accordingly, the parties of record were given an opportunity to provide comments on this new information. Only Atlantic filed a submission.

20. Atlantic opposed Sunshine's request for tariff relief on the grounds that it would constrain further expansion of ring-spun yarn production in Canada. Atlantic stated that, because of *NAFTA* content requirements, duty-free treatment of Sunshine's exports of greige fabrics to the United States, and possibly Latin America, would not be available. Moreover, Atlantic stated that tariff relief is not justified because of the small volumes of imports of greige fabrics with which Sunshine must compete.

21. Atlantic indicated that it would take a certain period of time to convert part of its production capacity to produce identical or substitutable yarns. If its whole plant were converted to the production of identical or substitutable yarns by running American Pima<sup>13</sup> cotton, Atlantic stated, it could produce such yarns immediately.

22. In its response submission of May 4, 2004, Atlantic stated that, contrary to assertions made by Sunshine, it has always been Atlantic's intention to produce fine count, combed ring-spun yarns, including the subject yarn. According to Atlantic, this is evidenced by its participation in the Tribunal's January 2002 and February 2004 investigations regarding such yarns. Atlantic submitted that it has the capability to produce identical or substitutable yarns, but that there has not been a viable Canadian market for such yarns. Atlantic submitted that it is Sunshine's inability to meet the standard commercial conditions (credit terms from 30 to 60 days, depending on price, but subject to being able to insure the customer) applied to all Atlantic customers that prevents the production of this type of yarn in Canada.

## OTHER INFORMATION

23. DIT informed the Tribunal that Canada does not maintain quota restraints on the subject yarn. The CCRA indicated that there would be no additional costs, over and above its normally incurred costs, to administer the tariff relief should it be granted on the subject yarn.

## ANALYSIS

24. The Minister's terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff and, in so doing, to take into account all relevant factors, including the substitutability of an imported fabric for a domestic fabric and the ability of domestic producers to serve the Canadian downstream industries. Consequently, the Tribunal's decision on whether to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

25. According to Sunshine, there are, at present, no domestic yarn producers that make identical or substitutable yarns in the finer counts. Atlantic opposed Sunshine's request for tariff relief on the basis that Atlantic could convert part of its current production capacity to the production of identical or substitutable yarns and that such relief could constrain further expansion of its ring-spun yarn production in Canada.

26. The Tribunal notes that no domestic yarn producer, other than Atlantic, has opposed Sunshine's request for tariff relief. Although Atlantic indicated that it could convert part of its production capacity to produce identical or substitutable yarns, it provided no commercial information on the yarns that could be produced. Moreover, it provided no evidence that it has taken action to produce identical or substitutable yarns. In this regard, the Tribunal notes the e-mail exchanges<sup>14</sup> of November 2002 and March 2003, in which Atlantic admitted that it is "not able to offer weaving yarns in ring spun carded or combed" and that it

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13. Pima is a fine cotton, light tan in colour, and the staple averages 4 cm. It is named after Pima County, Arizona.

14. Tribunal Exhibit TR-2003-002-18.01, Administrative Record, Vol. 5 at 12-16.



has “no intentions of producing” fine count, combed, ring-spun, 100 percent cotton yarns. Therefore, the Tribunal is of the view that production of such yarns at Atlantic is not imminent and that Atlantic is not currently in a position to supply commercial quantities of identical or substitutable yarns.

27. In order to conclude that Atlantic has the ability to supply identical or substitutable yarns, the Tribunal would require evidence, such as concrete plans to convert production capacity and orders on hand. As stated by the Tribunal in previous cases, it is the responsibility of the domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable products.<sup>15</sup> Therefore, the Tribunal concludes that Atlantic has not demonstrated, to the Tribunal’s satisfaction, that it will be able to supply identical or substitutable yarns to Sunshine and other potential buyers in the foreseeable future.

28. As noted above, Atlantic stated that Sunshine is unable to meet the standard commercial conditions that apply to all its customers, thereby preventing Atlantic from producing identical or substitutable yarns in Canada. On this issue, the Tribunal is of the view that, in all likelihood, some form of commercially acceptable alternative arrangement could have been established by Atlantic and Sunshine. In this regard, the Tribunal notes that Sunshine has clearly concluded satisfactory credit arrangements with foreign suppliers to obtain the subject yarn.

29. In light of the foregoing, the Tribunal is of the view that there are no domestic yarns identical to or substitutable for the subject yarn. Therefore, although the government would forgo the corresponding duty revenues, which are estimated to be over \$750,000 annually, prior to any duty drawback,<sup>16</sup> the Tribunal does not believe that there are likely to be any direct commercial costs to Atlantic associated with the removal of the customs duty on the importation of the subject yarn. On the basis of the information provided to the Tribunal, tariff relief would provide yearly benefits to users of the subject yarn, particularly Sunshine, in the form of reduced costs, which could translate into an improvement of their competitive position in the Canadian and U.S. markets, as well as benefits in terms of employment in New Brunswick, and lower prices for downstream users and consumers. In summary, the Tribunal finds that the tariff relief requested by Sunshine would provide net economic gains for Canada.

30. Sunshine requested that tariff relief be retroactive to March 1, 2002. The evidence presented to the Tribunal to justify such a request is that the payment of duties on the subject yarn has seriously affected its cash flow and that this has made it difficult to keep the subject yarn in inventory, causing it to close its plant at certain times. Furthermore, as outlined above, Sunshine tried diligently to find a domestic source of the subject yarn, trying several reasonable avenues over a period of months. When these attempts failed, Sunshine acted promptly to request tariff relief. In the Tribunal’s view, this constitutes circumstances that warrant retroactive tariff relief. The Tribunal is persuaded that, unless prompt and appropriate action is taken to allow for the refund of some or all of the duties already paid, Sunshine’s profitability will be adversely affected. Therefore, in this case, the Tribunal considers it appropriate to recommend that the tariff relief be retroactive to October 2, 2003, the date on which the request for tariff relief was filed with the Tribunal.

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15. See, for example, *Re Request for Tariff Relief by C.S. Brooks* (21 January 2004), TR-2002-006 at 10 (CITT); *Re Request for Tariff Relief by Tribal Sportswear* (18 February 2004), TR-2003-001 at 5 (CITT).

16. Sunshine is eligible for duty drawback on the subject yarn used to manufacture fabrics currently exported to the United States above the TPLs. Therefore, corresponding duty relief on the subject yarn is, in reality, lower than the stated figure.

**RECOMMENDATION**

31. In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries of cotton yarn (other than sewing thread), single, solely of cotton, combed, not put up for retail sale, ring-spun, unbleached, measuring less than 166 decitex, of subheading No. 5205.24, 5205.26 or 5205.27, for use in the manufacture of woven fabrics.

32. The Tribunal further recommends that the tariff relief be retroactive to October 2, 2003.

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James A. Ogilvy  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Meriel V. M. Bradford  
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