

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR

**REPORT TO
THE MINISTER OF FINANCE**

**REVIEW OF RECOMMENDATION
REGARDING
CERTAIN RING-SPUN YARNS**

MAY 3, 2002

REVIEW NO. TA-2001-001

Tribunal Members: Peter F. Thalheimer, Presiding Member
Richard Lafontaine, Member
James A. Ogilvy, Member

Research Director: Réal Roy

Research Manager: Paul R. Berlinguette

Counsel for the Tribunal: Dominique Laporte

Registrar Officers: Ingrid Sherling
Susanne Grimes

Participants:

Ronald C. Cheng
Benjamin P. Bedard
for Atlantic Fine Yarns Inc.

G.P. (Patt) MacPherson
for Agmont Inc.
Canadian Circular Knitters Association

Louis Shoop
for Main Knitting Inc.

Vincent M. Routhier
for Laxer Fibre Co. Limited

Zave Kaufman
for Kute-Knit Mfg. Inc.

Witnesses:

Stephen Aikins
President
Agmont Inc.
Canadian Circular Knitters Association

Michael Inhaber
Main Knitting Inc.

Kamal Salhani
Vice-President
Main Knitting Inc.

Carl Laxer
Laxer Fibre Co. Limited

Eric Laxer
Laxer Fibre Co. Limited

Sheldon Greenberg
Administration & Finance
Kute-Knit Mfg. Inc.

Pasqual Alles
Director
Atlantic Fine Yarns Inc.

Rene Clouthier
Plant Manager
Atlantic Fine Yarns Inc.

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 October 2, 2001, the Canadian International Trade Tribunal (the Tribunal) gave notice¹ that the tariff relief order (Order in Council P.C. 1999-1342) made on July 28, 1999, to implement the Tribunal's recommendation to the Minister of Finance (the Minister) in Review No. TA-98-004, concerning certain ring-spun yarns, was scheduled to expire on June 30, 2002. The notice further indicated that, under the Minister's standing reference, the duty relief provided by this order would cease unless the Tribunal issued a recommendation that tariff relief was still warranted and a tariff relief order was made by the government.

The tariff relief order concerns the following tariff item Nos.: 5205.14.20, 5205.15.20, 5205.24.20, 5205.26.20, 5205.27.20, 5205.28.20, 5205.35.20, 5205.46.20, 5205.47.20, 5205.48.20, 5206.14.10, 5206.15.10, 5206.24.10, 5206.25.10, 5509.53.10, 5509.53.20, 5509.53.30 and 5509.53.40.

On the basis of representations requesting or opposing the initiation of a review received by the Tribunal in reply to the notice, the Tribunal, on November 23, 2001, gave notice² that it would review the appropriateness of recommending the renewal, amendment or termination of the tariff relief order on importations of certain ring-spun yarns covered by the said order (the subject yarns).

As part of the review, the Tribunal's research staff sent questionnaires to potential producers of yarns identical to or substitutable for the subject yarns. A request for information was also sent to potential users and importers of the subject yarns. Letters were sent to a number of government departments requesting information and advice. Tribunal members and staff visited the premises of Atlantic Yarns Inc. (Atlantic) in Pokemouche, New Brunswick, to view the production process. A report describing this visit forms part of the record.

The Tribunal held a public hearing for this review on March 6 and 7, 2002, to obtain further evidence and hear arguments in respect of three specific issues. These were:

- the availability of identical or substitutable ring-spun yarns from domestic producers and their comparability with the subject yarns;
- the substitutability of carded ring-spun yarns for combed ring-spun yarns; and
- the impact on operations (i.e. effect on sales, prices, profitability and employment) should the tariff relief order be renewed.

BACKGROUND

On December 28, 1994, the Tribunal received a request from Kute-Knit Mfg. Inc. (Kute-Knit), of Montréal, Quebec, for the immediate and permanent removal of the customs duty on importations, from all countries, of combed ring-spun, polyester/cotton, blended yarns in specific sizes and compositions,³ for use in the production of greige fabrics and, subsequently, children's clothing.

In its report to the Minister, dated July 5, 1995, the Tribunal stated its concern with the issues of, first, whether combed ring-spun yarns were still produced in Canada and, second, whether carded yarns and

1. C. Gaz. 2001.I.3915.

2. C. Gaz. 2001.I.4314.

3. Namely, four yarn sizes (12/1, 18/1, 24/1 and 30/1) in three blend compositions (52:48, 50:50 and 55:45) and one yarn size (40/1) in three blend compositions (52:48, 50:50 and 65:35), *Re Request for Tariff Relief by Kute-Knit* (5 July 1995) (CITT). Yarn sizes are in the English cotton yarn numbering system.

combed open-end and air-jet yarns were substitutable for the yarns in question in Request No. TR-94-002. On the first point, the Tribunal found that it could not conclude that combed ring-spun yarns were still produced in Canada. On the second point, the Tribunal believed that carded yarns and combed open-end and air-jet yarns were not substitutable for the yarns in question in that request. In light of the forecasted positive economic benefits, the Tribunal recommended that tariff relief be granted. In order to provide a degree of stability for Kute-Knit and other users of combed ring-spun polyester/cotton yarns, the Tribunal recommended that the tariff relief be granted for a period of three years.

As a result of further representations from interested parties, the Minister requested, on November 22, 1995, pursuant to section 19 of the *Canadian International Trade Tribunal Act*,⁴ that the Tribunal inquire into information that was submitted to him by Canadian Yarns Ltd., a producer of certain carded open-end yarns, taking into account information previously submitted to the Tribunal in connection with its investigation in Request No. TR-94-002, together with any other information that the Tribunal considered appropriate in the circumstances. The reference also directed the Tribunal to report within 60 days from the date of reference as to whether tariff relief was warranted on the combed ring-spun polyester/cotton yarns in question.

On January 22, 1996, on the basis of its examination of all the information and submissions in Request No. TR-94-002A and its re-examination of the record in Request No. TR-94-002, the Tribunal reported to the Minister that it found no reason to change the recommendation in Request No. TR-94-002, and hence, it re-affirmed its recommendation that the customs duty on importations of combed ring-spun polyester/cotton yarns be removed for a three-year period.

After extensive consultations with textile spinners and knitters, the Minister decided,⁵ in lieu of adopting the Tribunal's recommendation in Request No. TR-94-002, to recommend to the Governor in Council that the tariff be removed for three years on the following inputs:

- (a) certain combed or carded ring-spun cotton and polyester/cotton yarns, measuring 190 decitex or less (31s and finer) for use in the manufacture of knitted fabrics or knitted garments;
- (b) certain combed or carded ring-spun cotton two-ply yarns, measuring less than 125 decitex per single yarn (finer than 47s), for use in the manufacture of knitted fabrics or knitted garments; and
- (c) certain combed ring-spun polyester/cotton yarns, measuring 492 decitex, 328 decitex and 246 decitex (12s, 18s and 24s), for use in the manufacture of knitted children's wear.

As a result of the Minister's recommendation, the Governor in Council approved, on July 10, 1996, tariff reductions for the yarns that are outlined above through the adoption of the *Customs Duties Reduction or Removal Order, 1988, amendment* and the *Knitting Yarns Remission Order, 1996*. The *Customs Duties Reduction or Removal Order, 1988, amendment* introduced Codes 4117 and 4118, which eliminated the tariff on these yarns for use in the manufacture of knitted fabrics or garments; the *Knitting Yarns Remission Order, 1996* provided for the remittance of duty on certain blends of combed ring-spun polyester/cotton yarns for use in the manufacture of knitted children's wear. In addition, the Minister informed the Tribunal that he had removed from the textile reference, for about three years, cotton and polyester/cotton knitting yarns measuring more than 190 decitex (coarser than 31s).

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

5. The Minister provided this information to the Tribunal by letter dated July 24, 1996.

A review of the 1996 recommendation to the Minister was conducted in 1999. In its report to the Minister, dated June 18, 1999, the Tribunal indicated that there existed a broad consensus in the textile spinning and knitting industries that, as a minimum, the tariff relief for certain ring-spun yarns, as was implemented at the time, should be continued for an additional period of three years.

The Tribunal noted that, as a result of the July 1996 compromise between textile spinners and knitters that led to the adoption of the *Customs Duties Reduction or Removal Order, 1988, amendment* and the *Knitting Yarns Remission Order, 1996*, the scope of the tariff relief that was provided on ring-spun yarns was significantly different from both the tariff relief that was originally sought by Kute-Knit and that which was contemplated in the Tribunal's 1995 recommendation.

The Tribunal indicated that the tariff relief that it recommended and that which resulted from the 1996 compromise were so closely linked that any attempt to dissociate them would have been impracticable, if not impossible, especially in light of the broad consensus that existed in the industries which were affected by the measures in place. On the other hand, the Tribunal noted that parties wishing to obtain tariff relief on yarns which were not encompassed by the two orders of July 10, 1996, still had the option of filing a properly documented request with the Tribunal, provided the yarns fell within the Tribunal's terms of reference.

In addition, notwithstanding that some parties suggested that tariff relief be continued on an indeterminate basis, the Tribunal was of the view that the industries' consensus was only possible by limiting the application of its recommendation to a fixed period.

With regard to the continuation of the exclusion of certain knitting yarns from the purview of the textile reference, the Tribunal was of the view that this issue rested entirely within the Minister's authority and that the Tribunal could not, in any recommendation, specify which textile inputs should or should not be included in the reference.

The Tribunal also noted that, from an economic point of view, tariff relief had provided domestic users of the subject yarns with benefits that were worth millions of dollars each year. Furthermore, the Tribunal stated that it did not receive any evidence that could have allowed it to conclude that the factors that led it to recommend that tariff relief be granted had significantly changed since it issued its recommendation, or that there would be any costs, other than forgone federal revenues, in recommending that tariff relief be extended for a further three-year period.


In light of the foregoing, the Tribunal recommended to the Minister that tariff relief, as provided by tariff item Nos. 5205.14.20, 5205.15.20, 5205.24.20, 5205.26.20, 5205.27.20, 5205.28.20, 5206.14.10, 5206.15.10, 5206.24.10, 5206.25.10, 5509.53.10, 5205.35.20, 5205.46.20, 5205.47.20 and 5205.48.20, and the remission of duties provided by the *Knitting Yarns Remission Order, 1996*, be continued beyond June 30, 1999, for an additional period of three years.

On July 28, 1999, the government implemented the Tribunal's recommendation, but replaced the *Knitting Yarns Remission Order, 1996* with three new tariff items: 5509.53.20, 5509.53.30 and 5509.53.40.

PRODUCT INFORMATION

In essence, the tariff relief covers certain ring-spun cotton and polyester/cotton yarns of 190 decitex or less for use in the manufacture of knitted fabrics and garments and combed ring-spun polyester/cotton yarns of specified cotton counts for use in the manufacture of children's knitted garments.

Yarn is defined as a continuous strand of textile fibres that may be composed of endless filaments or shorter fibres twisted or otherwise held together. There are presently different systems in use to measure the fineness of yarn. The tex system is a method of numbering yarns, fibres and all types of textile strands. It is part of the International System of Units and is intended to replace gradually the diverse numbering systems now used for cotton, woollen and worsted yarns, as well as the denier system. The tex number of a yarn is the weight in grams of one kilometre of material. The decitex (0.1 tex) is a variation of the basic tex unit. Under this system, the lower the number, the finer the yarn. The cotton yarn system, which is used almost exclusively in the United States and the British Commonwealth, is based on the number of 840-yard lengths per pound. Thus, 1s yarn has 840 yards per pound, 2s has 1,640 yards per pound, 10s has 8,400 yards per pound, and so forth. In the British Commonwealth, this system is referred as the “English cotton yarn numbering system” and is designated “Ne”. Under this system, the higher the number, the finer the yarn. It is noted that there is an inverse relationship between decitex and cotton count. As the decitex decreases (yarn becomes finer), the cotton count increases.⁶ The following table illustrates this point.

	Ne	Decitex
Coarse  Fine	12s	492
	18s	328
	24s	246
	31s	190
	36s	164
	48s	124
	56s	106

Fibres undergo a number of processes before they become yarns. The first step is blending, whereby various types, qualities and grades of fibres are brought together. Next comes carding, which involves brushing the fibres, removing foreign matter and forming strands called slivers. In order to make some types of higher-quality yarns, the slivers are next sent for combing, which separates desirable fibres from undesirable stock and removes the remaining impurities from the fibre stock. Next comes drawing, which is the process of evening out irregularities, elongating the slivers and, in some cases, combining slivers of different fibres to achieve the correct percentage blends. Finally, roving reduces the drawing sliver down to a size suitable for ring spinning. Twist is inserted into a yarn after it emerges from the front drafting rolls by passing it through a yarn guide, to a traveller and to a rapidly rotating bobbin simultaneously and continuously.

Open-end and air-jet spinning create yarns directly from slivers. They are high speed, low cost, efficient and capital intensive. They bypass the drawing and roving processes that must be performed in ring spinning, which add to the cost of ring-spun yarns, but improve their quality.

As of January 1, 2002, the subject yarns classified under tariff item Nos. 5205.14.20, 5205.15.20, 5205.24.20, 5205.26.20, 5205.27.20, 5205.28.20, 5205.35.20, 5205.46.20, 5205.47.20, 5205.48.20, 5206.14.10, 5206.15.10, 5206.24.10, 5206.25.10 and 5509.53.10 are duty-free under the MFN Tariff, the United States Tariff, the Least Developed Country Tariff, the General Preferential Tariff, the Mexico Tariff,

6. *Dictionary of Fiber & Textile Technology*, 3d ed. (Charlotte, NC: Hoechst Celanese, 1990); *Fairchild's Dictionary of Textiles*, 7th ed. (New York: Fairchild's, 1996).

the Canada-Israel Agreement Tariff and the Chile Tariff. The subject yarns classified under tariff item Nos. 5509.53.20, 5509.53.30 and 5509.53.40 are duty free under the MFN Tariff, the United States Tariff, the Mexico Tariff, the Canada-Israel Agreement Tariff and the Chile Tariff.

WRITTEN REPRESENTATIONS

Submissions⁷

Knitting Industry

- Agmont Inc. (Agmont)

Agmont, of Montréal, Quebec, which was founded in 1965, stated that it is a major producer of circular knitted fabrics made from the subject yarns. Agmont supported the continuation of tariff relief without change. Agmont submitted that, should duties be re-established, it would suffer losses, and funds would not be available for research and development, as well as for re-investment in plant facilities. Agmont stated that, if it were to pay duties on the subject yarns, it would have to raise the prices on its fabrics, thus making it uncompetitive with imported fabrics from developing countries and making its customers' garments uncompetitive with imported apparel. If its customers turned to imported fabrics, it would lose sales, and jobs would be lost.

Agmont stated that, over the past two years, the textile market has changed dramatically, in that retailers, led by Wal-Mart, are increasingly ready to purchase imported garments if they are unable to obtain lower domestic prices. In addition, Agmont indicated that sales activity for fabrics in the Canadian and U.S. markets declined significantly in the 2000-2001 period. Agmont indicated that, at the same time, it is being shut out of the U.S. market or having its profit margins destroyed by the *Caribbean Basin Trade Partnership Act* (CBTPA) or the *African Growth and Opportunity Act* (AGOA), which grant duty-free access to the United States for garments made with U.S. fabrics only.

Agmont submitted that, should tariff relief be terminated, exports to the U.S. market would be adversely affected because it ships under tariff preference levels (TPLs) and, therefore, would not be able to reclaim the duty that it would pay on the yarn.⁸ Moreover, Agmont stated that Atlantic's pricing is not feasible. In this regard, it indicated that buying yarns from Atlantic at prices of \$1.16/kg or more over the price of the subject yarns would not be viable for its business.

Agmont stated that Atlantic was aware that the subject yarns were duty free when it established its facilities and that, at that time, Atlantic indicated that it would be satisfied with getting a portion of the business related to the NAFTA yarns. Agmont submitted that it is unfair to argue now for the re-establishment of duties when this would represent a substantial increase in costs to Agmont and other knitters.

7. The submissions include responses to Tribunal questionnaires.

8. Under the *North American Free Trade Agreement* (NAFTA), a duty refund system, called "the lesser-of concept", replaced the drawback regulations for Canada-United States trade. Under this 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.

However, under Canadian TPLs, formerly known as tariff rate quotas under the *Canada-United States Free Trade Agreement*, items may, under certain conditions, receive preferential NAFTA tariff treatment despite their incorporation of non-North-American (i.e. non-originating) inputs.

– Cannon Knitting Mills Limited (Cannon)

Cannon, of Hamilton, Ontario, has been manufacturing knitted garments for men, women and children since 1962. Cannon supported the continuation of the tariff relief. Cannon indicated that identical or substitutable yarns are not available in Canada. Cannon stated that, in general, exports of garments incorporating the subject yarns have increased. Cannon indicated that, as a result of tariff relief, its production has increased, prices have reflected zero duty, employment has remained steady, and investment in equipment that processes the subject yarns has increased, leading to a positive investment climate in an otherwise very difficult market. Cannon submitted that re-establishing duties on the subject yarns would lead to an increase in selling prices for Canadian-made fabrics and garments. As a result, the manufacture of products using the subject yarns would decrease significantly, and sales would be adversely affected, which, in turn, would lead to a decrease in labour requirements, negative financial performance and a fall in investments.

– Concorde Dyers Inc. (Concorde)

Concorde, of Ville d'Anjou, Quebec, was founded in 1991 and is a producer of dyed and finished knitted fabrics, including jersey cotton fabrics, ribbed cotton fabrics, jersey cotton and ribbed cotton fabrics blended with spandex elastic yarn and fleece fabrics. Concorde supported the continuation of tariff relief. Concorde stated that the price of the subject yarns is the most determining factor in making its product line competitive. Moreover, Concorde indicated that, in addition to the price of the subject yarns, the quality of some of the fine subject yarns that are not available from domestic producers, is also a main reason for its preference. Concorde stated that the benefit of tariff relief for its firm is estimated at \$375,000 for the year 2001. Since Concorde expects to use more yarn in 2002, the anticipated benefit of the continuation of tariff relief is expected to be about \$430,000. Concorde also indicated that a project is under way, at an estimated investment of \$250,000, for use of the subject yarns in March 2002.

– Les Entreprises Chalrena Inc. (Chalrena)

Chalrena, of Montréal, Quebec, a manufacturer of collars, cuffs and trims for knitted garments, requested the continuation of the tariff relief because re-establishing the duties, at this time, would hurt the whole industry. Chalrena indicated that its workforce has already been reduced from 29 to 13 workers over an 18-month period and that, if it has to absorb any further price increase in yarn, many more jobs will be lost or it will have to abandon business.

– Kute-Knit

Kute-Knit was founded in 1959 and is a vertically integrated manufacturer of children's sportswear and playwear. In 1971, Kute-Knit began commission fabric dyeing operations and, a few years later, started fabric wholesaling. Kute-Knit supported the continuation of tariff relief because the benefits are both positive and substantial. Kute-Knit stated that no Canadian yarn producer has offered to manufacture and supply the yarns specified in the tariff relief order. Kute-Knit is of the view that, although imports of certain combed ring-spun polyester/cotton yarns (12s, 18s and 24s) have decreased significantly in recent years, a market opportunity for these yarns exists, provided the status quo is maintained. Kute-Knit stated that declines in its fabric production caused by tariff changes would severely impact its financial performance. According to Kute-Knit, this, in turn, would limit its ability to continue investing in plant modernization, while jeopardizing the job security of many of its employees.

Kute-Knit pointed out that fabrics produced from the subject yarns have a very soft hand, are smoother and brighter in appearance, and are more comfortable to wear than fabrics manufactured from substitutable yarns. Kute-Knit indicated that the so-called substitutable yarns are clearly qualitatively inferior to combed ring-spun yarns and are not acceptable to its customers. Kute-Knit stated that, when customers request fabrics manufactured with combed ring-spun polyester/cotton yarn, it has no choice but to provide that yarn. Kute-Knit stated, however, that, when circumstances permit, it incorporates a variety of domestic yarns in the end products.

Kute-Knit submitted that, due to poor market conditions, more bankruptcies in the textile industry have occurred and it has suffered in all areas of operations, from apparel wholesaling to fabric wholesaling and, more importantly, its capital-intensive fabric dyeing operations. In this regard, Kute-Knit indicated that its overall sales for the first quarter of this year have declined compared to those of the same period last year and in 2000. Moreover, Kute-Knit indicated that its dyehouse operations have been hit with rising energy and labour costs.

Kute-Knit submitted that, despite a decline in the value of the Canadian dollar in relation to the U.S. dollar, export sales of knitted fabrics to the United States have declined. According to Kute-Knit, this decline is also reflected in a dramatic reduction in TPL utilization for knitted fabrics and the loss of sales because of the CBTPA. In addition, Kute-Knit stated that Canadian apparel manufacturers are under constant pressure to lower prices in order to maintain market share. In this regard, Kute-Knit indicated that the country's largest retailers, i.e. Wal-Mart, Zellers, The Bay and Sears, as well as smaller chain stores, are attracted by the higher margins associated with import programs. Kute-Knit submitted that, because the smallest difference in price can be the deciding factor in determining which company gets an order, a re-establishment of duties on the subject yarns will only worsen the domestic apparel manufacturer's competitiveness and eventually result in job losses.

– Main Knitting Inc. (Main)

Main, of Montréal, Quebec, was founded in 1940 and is a vertically integrated producer of undergarments, such as T-shirts, panties and briefs. Main stated that, if tariff relief is terminated, it would move its production offshore, as its pricing structure would not allow it to compete with finished goods imported from the Caribbean Basin countries, which will be quota-free in 2005. Main indicated that it is one of the largest employers in Canada and that, in a market where the customer is king, it must be able to produce goods at the lowest price possible. In this regard, Main stated that, in a large volume business, it must have the ability to quote prices where every cent counts. Main also stated that, should it lose its price advantage, exports would decline by 70 percent and 1,500 employees would lose their jobs. Main submitted that, because of tariff relief, sales have increased by 800 percent and employment has risen from 360 to 2,000 people. Main stated that, should tariff relief be continued, employment is expected to increase by an additional 30 percent.

Main stated that Atlantic is the only company capable of producing yarns with cotton counts above 31/1. Main indicated, however, that Atlantic is not, at present, able to produce combed or carded ring-spun yarns with cotton counts above 31/1 in the same quality and required quantities⁹ as those from imported sources. Main also stated that the subject yarns are less expensive than domestic yarns by about US\$1/kg and that the price of Atlantic's yarn is substantially higher than the price of yarns available from Mexico.

9. On the basis of available information, Main estimated that Atlantic would need to produce 16 million kilograms of ring-spun yarns with cotton counts above 31/1 to satisfy the demand in 2002.

With respect to carding technology, Main indicated that Parkdale Mills, a U.S. manufacturer of ring-spun yarn that uses DK 903 carding technology in its facility, has found it necessary to invest \$100,000 per machine to perform the combing process. Moreover, Main stated that, because the yarn-producing equipment is highly automated, it does not lead to the creation of a significant number of jobs. In this regard, Main submitted that any jobs created at Atlantic as a result of a hypothetical increase in sales would in no way counteract the jobs losses in the knitting industry, should tariff relief be terminated.

Main indicated that, at present, there is no real advantage under NAFTA for Atlantic to produce the subject yarns because TPLs are readily available to export apparel made of foreign yarns to the United States. Main also stated that it currently buys large quantities of yarns from Atlantic and that, should tariff relief be continued, Main is of the view that Atlantic would not lose employment.

– Manoir Inc. (Manoir)

Manoir, of Ville Saint-Laurent, Quebec, was founded in 1971 and is a vertically integrated manufacturer of circular knitted fabrics. Its fabrics are sold to producers of a wide range of garments, including lingerie, children's wear, high-performance sportswear, activewear, uniforms and men's and ladies' fashion apparel. Manoir supported the continuation of tariff relief. Manoir stated that, with the advent of tariff relief, it has been able to approach the market more aggressively. Manoir indicated that it has been able to offer a much wider selection of fabrics, catering to a broader segment of the apparel market by offering outstanding value resulting from superior quality fabrics at competitive prices.

Manoir submitted that identical or substitutable yarns are not commercially available from domestic suppliers. Manoir indicated that Atlantic does not supply carded ring-spun yarns in any of the counts, i.e. 32/1 and finer, of the subject yarns that it purchases. Manoir stated that coarser carded ring-spun yarns have been purchased from Atlantic but that these yarns are far costlier than imported yarns of similar counts. Moreover, Manoir indicated that there is no domestic supply of identical or substitutable yarns in combed cotton. Manoir submitted that tariff relief has resulted in a significant growth in sales in the fabric categories utilizing the subject yarns and that these product categories have been crucial in the exploitation of the export market to the United States. Manoir stated that garments comprised of the fabrics made with the subject yarns have driven export gains of its domestic apparel customers.

Manoir submitted that the termination of tariff relief on the subject yarns would have a devastating effect on the sales of the fabrics incorporating the subject yarns. Manoir indicated that the imposition of an 8.5 percent tariff would drive up the cost of the yarn, an increase that could not be passed on to apparel manufacturers and, least of all, to the retail level. Manoir argued that, as a result, the viability of fabric producers would be adversely affected. Manoir also indicated that price increases at any link in the supply chain usually result in an increased demand for garments that are produced offshore.

– Nalpac Company (Nalpac)

Nalpac, of Longueuil, Quebec, a major producer of circular knitted and warp-knit fabrics, supported the continuation of tariff relief. Nalpac stated that, as a result of tariff relief, it has been able to sell fabrics produced with the subject yarns. Nalpac submitted that there are no identical or substitutable yarns available domestically. Nalpac indicated that, like all Canadian producers, it has been facing competition from developing countries, as well as increasing market protectionism from the United States. As a result, it must offer products at competitive prices to maintain market share and to obtain margins that will justify investment in both jobs and capital projects.

Nalpac stated that it could use alternative yarns, if available, only if they were identical in all aspects, were available without delivery delays and were priced no higher than imported yarns. Nalpac indicated that its customers would not tolerate quality deviations, as they continue to exact strict delivery schedules and price requirements. According to Nalpac, penalties and lost business would be the result of any deficiencies.

Nalpac submitted that tariff relief enables it to produce fabrics for export to the United States, to offer employment to workers in the province of Quebec and to make investments in capital projects. Nalpac indicated that margins are already low because of foreign competition. Nalpac stated that, should tariff relief be terminated, prices could not be increased and the result would be a loss of sales and exports to the United States, a reduction in production levels, employment and capital projects.

– Paris Star Knitting Mills Inc. (Paris Star)

Paris Star, of Montréal, Quebec, is a manufacturer of knitted fabrics, including velour fabrics, jersey fabrics, terry fabrics, fleece fabrics with lycra or spandex, interlock fabrics, sherpa fabrics and ribbed fabrics. Paris Star supported the continuation of tariff relief, since termination would jeopardize its ability to meet competitive fabric prices worldwide. In this regard, Paris Star indicated that garment manufacturers would have difficulty meeting price points with an increase in fabric costs and, as a result, would move to imported fabrics, particularly cotton fabrics from India which are made with high-quality yarn. Paris Star indicated that, although there are now some spinners that have established themselves in Canada to produce finer cotton counts of yarn, they can never be competitive with offshore spinners, since labour costs in North America are four to five times higher.

Paris Star stated that, in essence, in assisting Atlantic, the government is sponsoring job creation in a segment of the spinning industry that will employ at the most 200 people. On the other hand, should tariff relief be terminated, the offset will be a price penalty that will be felt throughout North America in downstream knitting and garment manufacturers with 20 times the number of job losses. Paris Star indicated that quality ring-spun yarns of finer counts are much too expensive to produce and North American yarn spinners will never attain profitability levels in the long run.

Paris Star indicated that there are no domestic yarns that are substitutable for the subject yarns, specifically the 32/1 combed ring-spun cotton yarns. Paris Star stated that, should tariff relief be terminated, this would add approximately \$0.35 to \$0.60/kg to fabric prices, which the market would not bear. In addition, Paris Star indicated that, if the price on its fabrics made with finer yarns (32s and up) becomes prohibitive, its customers may go elsewhere for fabrics comprised of coarser yarns (18s to 28s).

– Stanfield's Limited (Stanfield's)

Stanfield's, of Truro, Nova Scotia, is a major producer of underwear, pyjamas, loungewear, knit shirts, hosiery, T-shirts and turtlenecks. Stanfield's supported the continuation of tariff relief because identical or substitutable yarns are not produced competitively in Canada. Stanfield's supported the inclusion of all ring-spun yarns in the tariff relief because the supply of combed ring-spun yarns in finer cotton counts is limited.

Stanfield's stated that the consistency of cotton count is usually better with imported ring-spun yarns. According to Stanfield's, this gives a much higher quality fabric with fewer defects. Stanfield's also indicated that price is the number one characteristic accounting for its preference for using the subject yarns. Stanfield's pointed out that cotton counts of 38/1 and finer are not readily available domestically. Stanfield's

indicated that Atlantic's yarns are not price competitive with imported yarns and that Atlantic's facilities were built knowing that there was tariff relief on yarns with cotton counts of 31/1 and finer.

– Tex Leader International Ltée (Tex Leader)

Tex Leader, of Montréal, Quebec, founded in 1975, is a manufacturer of circular knitted fabrics, including jersey, interlock, fleece and ribbed fabrics. Tex Leader supported the continuation of the tariff relief. Tex Leader indicated that termination of such relief would have negative effects on its business. Tex Leader submitted that, to the best of its knowledge, there are no domestic yarns available in the cotton counts that it uses. Tex Leader indicated that it would consider using identical or substitutable yarns only if the price and quality were comparable. Tex Leader stated that tariff relief has resulted in improved sales of fabrics made with the subject yarns, which, in turn, has kept its employees more productive. Tex Leader indicated that termination of the tariff relief would result in lower sales and possible job losses. In addition, Tex Leader stated that higher-priced fabrics would make it more difficult to sell products to domestic manufacturers, resulting in potential layoffs for these companies and an increase in imports of finished garments.

– Tobelle Textiles Inc. (Tobelle)

Tobelle, of Milton, Ontario, a small producer of jersey, ribbed and fleece fabrics, supported the continuation of tariff relief. Tobelle stated that it presently imports 80 percent of its yarns duty free and that the imposition of duties on the subject yarns would threaten its business. In this regard, Tobelle indicated that any resulting increase in the price of fabric would bring about the loss of a major customer. Tobelle stated that it currently operates at 40 percent capacity and that it is only able to break even by severely restricting expenses.

– Tricots Liesse (1983) Inc. (Liesse)

Liesse, of Ville Saint-Laurent, Quebec, a producer of circular knitted apparel, supported the continuation of tariff relief. Liesse indicated that fine yarns, specifically yarns with cotton counts of 32/1 and finer, are not available in Canada. Liesse submitted that, should tariff relief be terminated, its production would drop by 50 percent, effectively putting it out of business.

Yarn Producers

– Atlantic

Atlantic, of Mississauga, Ontario, was founded in 2000 to produce ring-spun yarns in Pokemouche, New Brunswick. Atlantic commenced operations on October 15, 2001. It also has a sister company, located in Atholville, New Brunswick, which began production of open-end yarns in 1998.

Atlantic indicated that its plant in Pokemouche consists of a 285,000-square-foot building and 44 spinning machines. According to Atlantic, this machinery is capable of producing 14 million kilograms per year of carded 100 percent cotton and polyester/cotton ring-spun yarns with counts ranging from Ne 130 to Ne 6. In this regard, Atlantic indicated that its present capacity already outstrips the imports of the subject yarns. Atlantic also stated that the approximate costs of the plant, machinery and equipment under Phase 1 of its four-phase development plan were \$70 million. Atlantic stated that, under Phase 1, it is essential that it develop a solid domestic customer base, allowing it to produce at a capacity utilization rate of at least 50 percent. According to Atlantic, this would enable it to establish a viable operation and proceed with

Phases 2, 3 and 4. Atlantic indicated that, if Phase 1 were viable, Phase 2 would be completed in 2002 at an additional cost of \$80 million. Atlantic stated that Phase 2 would provide an extra 14 million kilograms per year of combed and carded 100 percent cotton and polyester/cotton ring-spun yarns with counts ranging from Ne 130 to Ne 6.

Atlantic indicated that the potential for expansion of the market for ring-spun yarns in North America is enormous, as it currently represents less than 5 percent of yarn production in Canada; in contrast, it makes up 50 percent of yarn production in the rest of the world. Atlantic stated that production capacity for ring-spun yarns in Phase I alone will be able to more than satisfy current and estimated Canadian demand for the yarns covered by this review. Atlantic also stated that it intends to export production in excess of domestic market demand, principally to the United States. Atlantic stated that, if sales developed under Phases 1 and 2 as anticipated, Phases 3 and 4 would be completed within 5 years, subject to the availability of labour, energy and capital. Atlantic indicated that each phase would add new facilities of between 250,000 and 300,000 square feet and that the product mix would reflect the demand.

Atlantic indicated that the yarns which it can produce in Phases I and II are identical to or substitutable for the subject yarns covered under tariff item Nos.: 5205.14.20, 5205.15.20, 5205.24.20, 5205.26.20, 5205.27.20, 5206.14.10, 5206.24.10, 5206.25.10, 5509.53.10, 5509.53.20, 5509.53.30 and 5509.53.40. Atlantic stated that, although it does not produce 2-ply yarns, several companies in Canada could readily twist its single-ply yarn into a 2-ply yarn.

Atlantic indicated that, although it does not use combing in its processes, it has incorporated the latest blowroom and carding technology into its ring-spun yarn production facilities. Atlantic stated that the advances made in carding technology have significantly bridged the gap between carded yarns and combed yarns made on older equipment. Atlantic submitted that, in many applications, the difference between carded and combed yarns in a modern facility will not be significant. In this regard, Atlantic indicated that it uses DK 903 carding technology in its Pokemouche facility, whereas imported yarns from India and Pakistan are generally made using DK 760 carding technology or even older. Atlantic stated that there is a difference of less than 10 neps¹⁰ per gram between imported combed DK 760 yarns and the yarns produced using its DK 903 carding technology. Atlantic stated that, in terms of trash content, the combing process does not provide any advantages because the short fibre content in the carded yarn produced at Pokemouche would be, at most, 1 percent more than the imported combed DK 760 yarn. Atlantic submitted that, in terms of yarn evenness, imperfections and yarn breaking tenacity, there is little difference between imported combed DK 760 yarns and carded DK 903 yarns. Atlantic stated that imported combed yarns would have to be "supercombed" to match or improve on Atlantic's quality of carded yarns.

Atlantic stated that it uses high-quality U.S. cotton with complete bale data and low trash content. In this regard, it indicated that the quality of U.S. cotton in terms of its consistency and the data provided for every single bale is significantly greater than the quality of cotton from other parts of the world. Atlantic indicated that much of the cotton produced in India and Pakistan has serious contamination problems. Atlantic also stated that combing of less than 15 percent has no advantage over Atlantic's carded yarns and that up to 60 percent of the combed yarns imported into Canada are less than 15-percent-combed. Atlantic submitted that, in general, based on objective criteria, carded yarns are substitutable for combed yarns, especially with regard to yarn counts of up to 40/1. It indicated that combing might be required if the strength of the fine yarn count is the sole basis for choosing between carded yarns and combed yarns.

10. A "nep" is a small knot of entangled fibres that usually will not straighten to a parallel position during carding or drafting.

Atlantic submitted that its Phase 1 facility, like all yarn production facilities, must be operated at a high capacity utilization due to the high amount and proportion of fixed costs. Atlantic indicated that, from the perspective of capacity utilization and gross margins, it requires significant production and sales of the finer yarns and cannot remain viable by selling only coarser yarns. According to Atlantic, a lower capacity utilization would result in higher unit costs and lower margins. Atlantic stated that it is critical that it not proceed with Phase 2 until it has some assurance that it will be able to achieve projected production and sales levels, which would be in jeopardy should tariff relief be extended. Atlantic also indicated that price weakness is likely to occur after mid-year because of additions to production capacity in other countries and the resultant low prices of the subject imports into Canada. As a result, there will be pricing pressures on Atlantic, which would be exacerbated by an extension of the tariff relief.

With respect to pricing comparisons, Atlantic indicated that the Tribunal must take the following facts into consideration: (1) the need for using letters of credit or having to pay in advance for imported yarns as opposed to domestic yarns has the effect of raising the cost of imported yarns and may not be accounted for in import prices; (2) its actual prices are lower than those on its price list; (3) should tariff relief be terminated, Atlantic's costs would decrease more quickly as a result of the efficiencies generated by increased production, which, in turn, would permit more flexibility in Atlantic's pricing; and (4) Atlantic's products are completely competitive with imported products when taking into account the benefits associated with purchasing from a domestic producer (delivery, security of supply and consistency of quality).

Atlantic submitted that, as a result of the tariff relief on finer yarns, Atlantic's production to date has been primarily in the coarser range (below Ne 32). Atlantic claimed that the distinction between the subject yarns (Ne 32 and above) and other yarns (below Ne 32) is arbitrary and is of no real value in establishing differences in usage. Atlantic indicated that most of the imports are Ne 32 and that the duty-free status for Ne 32 yarn has encouraged its importation in instances where the client would have purchased coarser Ne 30.

Atlantic stated that, although its cotton yarns in the coarser range (below Ne 32) compete with imports that are subject to duties of 8.5 percent, they are projected to gain increasing market share. Atlantic indicated that the presence of duties has certainly not eliminated imports of ring-spun cotton yarns in the coarser range. In Atlantic's view, there is every reason to suggest that it will also be able to compete with imports and gain a comparable or greater market share of the subject yarns, should tariff relief be terminated.

Atlantic submitted that the establishment of its facility in Pokemouche has had a very positive economic impact on the development of the region in terms of spin-off employment and investment. Atlantic indicated that it currently employs 150 persons and that Phase 2 will add a further 150 employees. If Phases 3 and 4 are able to proceed, they will add a further 300 direct employees, as well as further investment of at least \$150 million. Atlantic submitted that, should tariff relief on the subject yarns be extended, jobs and an overall investment of \$150 million under Phases 1 and 2 would be jeopardized, as well as jobs and further investments projected in Phases 3 and 4. Furthermore, Atlantic stated that Canadian knitters and weavers, using domestic ring-spun yarns produced by Atlantic, would be able to produce and export fabric and garments of Canadian origin to our NAFTA partners duty free, as well as outside the NAFTA area (at the MFN Tariff).

Atlantic stated that the overall impact of imposing an 8.5 percent duty on the subject yarns would actually be closer to 2.6 percent on fabric costs and probably only 1 to 1.5 percent on the cost of garments

made from such fabrics. Moreover, the measurable impact would decline over time because the applicable rate of duty will be reduced to 8 percent by 2004.

– Cavalier Textiles (Cavalier)

Cavalier, of Ville Saint-Laurent, Quebec, is a producer of specialized spun yarn and strand yarn. It stated that it produces heather¹¹ yarns spun from a combination of unbleached and coloured (dyed) fibres, which are classified as “dyed” yarns under the *Harmonized Commodity Description and Coding System*.¹² Cavalier indicated that these yarns were specifically excluded from tariff relief by requiring that the duty-free yarns be “unbleached” and by the words “other than mock twist”. Cavalier stated, however, that heather yarns, measuring 190 decitex or less, are entering Canada under the duty-free provisions, primarily from low-cost countries such as Pakistan and India. Cavalier submitted that, through aggressive pricing based on duty-free access, these countries have substantially increased their market share in Canada. Cavalier requested that, should tariff relief be continued on the subject yarns, the issue of heather yarns be clarified.

Finally, Cavalier stated that the existing duty-free provisions were implemented by the Department of Finance as part of a package of measures incorporating the following two key elements: (1) duty-free entry for certain fine-count ring-spun yarns for knit fabrics and garments; and (2) the exemption from the textile reference of other types of cotton and polyester/cotton knitting yarns. Cavalier requested that the second element of the original package be continued, should tariff relief be extended.

Others

– Canadian Circular Knitters Association (CCKA)

The CCKA supported the continuation of tariff relief without change. In this regard, it stated that continuation of the status quo is supported by the knitting industry at large and that the companies listed above have expressed support directly to the Tribunal. On the other hand, only Atlantic, which has been in operation for less than six months, has opposed the continuation of the tariff relief. The CCKA indicated that such relief has enabled the knitting industry to maintain its production base in Canada and enabled knitters and its customers to remain competitive in the face of increasing imports of fabrics and garments. The CCKA submitted that, should duties be re-established, the viability of the knitting industry would be adversely affected and funds would not be available for research and development, as well as re-investment in plant facilities.

The CCKA stated that, over the past two years, the textile market had changed dramatically, in that retailers, led by Wal-Mart, are insisting on lower-priced garments. The CCKA submitted that retailers will continue to buy from Canadian knitters only if prices are competitive with those of imported garments. The CCKA indicated that a key factor in this regard is the continuation of the tariff relief on the subject yarns. The CCKA submitted that, due to the pressure to lower prices, the knitters’ margins have eroded this year and continue to fall. The CCKA submitted that, over the past year, circular knitters have been operating at a loss and could not sustain the shock of a re-establishment of duties. The CCKA stated that knitters are fighting for survival and that buying yarns from Atlantic at higher prices, i.e. \$1.16/kg or more compared to the subject yarns, would not be viable. In addition, the CCKA indicated that sales activity for fabrics in the Canadian and U.S. markets declined significantly in the 2000-2001 period. The CCKA submitted that

11. A term describing mottled (fancy) or melange-type yarns.

12. Customs Co-operation Council, 1st ed., Brussels, 1987.

knitters are also being shut out of the U.S. market or having their profit margins destroyed by the CBTPA and the AGOA, which grant duty-free access to the United States for garments made with U.S. fabrics only.

The CCKA submitted that, should tariff relief be terminated, many knitters would be forced to cease operations and 4,000 jobs would be put in jeopardy. The CCKA indicated that the price for domestic carded yarns (32/1) is approximately \$4.80/kg compared to \$3.54/kg for imported yarns. Consequently, imposing an 8.5 percent duty on the subject yarns would not increase Atlantic's production because its prices would still be 24 percent higher than those of imported yarns.

– Laxer Fibre Co. Limited (Laxer)

Laxer, of Montréal, Quebec, an importer/sales agent of the subject yarns since 1960, stated that the continuation of tariff relief on the subject yarns is critical to the continued existence of a viable knitting, dyeing and garment industry in Canada. Laxer claimed that access to such high-quality yarns, which are not available in Canada, has permitted Canadian knitting mills to compete in the U.S. and world markets, as well as against imports of finished fabrics and garments into Canada. Laxer submitted that tariff relief should be continued in order to address the difficulties caused by recent bilateral trade legislation in the United States. Furthermore, Laxer stated that downstream industries have become more competitive because of lower tariffs and that re-imposing duties on the subject yarns would be a 20-year step backward.

Laxer submitted that Atlantic established its state-of-the-art facility under the current tariff structure and that re-establishing duties on the subject yarns would yield a windfall profit to Atlantic on the backs of Canadian textile manufacturers. Laxer claimed that, *inter alia*, artificially high material costs, due to the duty structure on yarns, led to the demise of ring-spun yarn production in Canada and that re-imposing duties on the subject yarns would be short-sighted in a similar way.

Laxer submitted that Atlantic's carded yarns are not substitutable for the combed yarns for the following reasons: (1) the labelling of a garment as "combed" is a legal description; (2) garments labelled "combed cotton" have a high consumer recognition and often command a higher price; (3) for yarns imported from India and Pakistan, the degree of combing is 18 percent and 22 percent respectively; (4) typically, the subject yarns are made of superior cotton; (5) the raw cotton used by spinners in India and Pakistan often has a higher trash content, but typically yields a higher quality yarn since the cotton has not been overworked at the ginning¹³ stage; (6) bales of cotton in these countries often have greater uniformity since they are purchased by lots or from individual stations representing individual fields or growers, as compared to U.S. cotton which is purchased from a broker that may have sourced the cotton from several growers and from several states; and (7) the DK 903 carding machines are mainly used in high labour market countries for high volume production, specifically in heavier non-subject yarn counts.

– Unicotex Ltée (Unicotex)

Unicotex, of Montréal, Quebec, an importer/sales agent of the subject yarns for Canadian knitters, was founded in 1978. Unicotex supported the continuation of tariff relief because, if Canadian knitters are to survive in the face of imported garments at low prices, they must have access to low-priced, high-quality yarns. Unicotex stated that identical or substitutable yarns are not available in Canada and that domestic spinning mills mostly offer very low-grade yarns. Unicotex indicated that Atlantic would like to supply the market with ring-spun cotton yarn but that its prices are too high. Unicotex submitted that, if Canadian knitters were to use yarns at high prices, they would lose business to importers of finished garments.

13. A process that separates cotton fibres from the seeds.

Reply Submissions

Atlantic

As far as Agmont and the CCKA are concerned, Atlantic stated that the factual situation in place in 1996 has materially changed, i.e. the establishment in Canada of domestic production of identical or substitutable goods. Atlantic indicated that, depending on the yarn count produced, its production could vary from 7 million kilograms to 20 million kilograms. Atlantic stated that, if Phase 2 is able to proceed, it is clear that its capacity would exceed the total Canadian market requirements for the subject yarns. Atlantic also stated that, if the price-distorting effect of the tariff relief is removed, market prices in Canada will increase and Atlantic will be able to gain market share over imported yarns. This, in turn, would improve Atlantic's volumes and margins and enable it to proceed with Phase 2 of its four-phase production schedule. Atlantic submitted that as production capacity and product range increase, so would Atlantic's ability to increase its sales volumes.

Atlantic indicated that Canadian garments produced using Atlantic's yarns would be able to enter the United States duty free without resorting to the TPLs. As far as quality is concerned, Atlantic indicated that it relies on the success which it has already had to date, primarily with its non-subject yarns and on the fact that its yarn is spun on state-of-the-art equipment, using high-quality cotton. Atlantic submitted that its yarn is of very high quality and will continue to be accepted in the Canadian market. With respect to pricing, Atlantic submitted that the tariff relief is a market distortion, which has resulted in artificially depressed prices, and that its pricing is competitive with imports and will remain competitive if the tariff relief order is permitted to expire as scheduled.

In response to Main's submission, Atlantic indicated that it is fully capable of producing ring-spun yarn in counts of 30/1 and above and that it has produced yarn above 30/1 during 2001 and 2002. Atlantic stated that Main's requirements for ring-spun yarns in counts ranging from 30/1 to 50/1 is perhaps significantly less than 80 percent of its total yarn requirement. In Atlantic's opinion, Main's use is primarily of yarn counts from 30/1 to 32/1, which are among the counts that Atlantic is currently producing. Given Main's significant production using open-end yarns and non-subject ring-spun yarns, Atlantic stated that Main's claims with respect to the impact on employment relating to the expiry of the tariff relief order on ring-spun yarns of 32/1 and above must necessarily be reduced. Atlantic estimated that, at most, 250 jobs at Main could be at risk.

Atlantic stated that the difference between a yarn which has been combed less than 15 percent and Atlantic's carded yarn would be negligible. According to Atlantic, a superior carded yarn may have less trash content, higher consistency and result in a softer fabric than would poorly combed yarn. Atlantic stated that the quality of the raw material and of the equipment determines the quality of the yarn. According to Atlantic, the quality of the yarns produced in the NAFTA region is as high as or higher than the quality of yarns produced in other parts of the world. Atlantic indicated that it will soon be able to produce high-quality combed ring-spun yarns because state-of-the-art Rieter equipment will be installed in its Phase 1 facility and be operational by July 2002.

Atlantic indicated that its pricing relative to import pricing is competitive at present and will remain competitive if the tariff relief order is permitted to expire as scheduled. According to Atlantic, removing the tariff relief on ring-spun yarns in counts 32/1 and above would enable it to raise prices above their present artificially depressed levels. This, in turn, would improve Atlantic's margins and expand the employment and investment opportunities in Canada. According to Atlantic, the cost impact on the fabrics and, ultimately, the garments made from the subject yarns or Atlantic's yarns would be almost negligible.

In response to claims made by Laxer, Atlantic submitted that the outcome of this review will not impact access to the U.S. market except to the extent of Atlantic's ability to supply made-in-Canada yarns to produce fabrics and garments of wholly Canadian origin. Atlantic stated that an increase in the price of yarn has a declining overall cost impact through the stages of production of the fabric and the garment. As such, the potential price increase of the subject yarn would not have a significant impact on the production of the finished products. Atlantic stated that the construction of Phase 1 of its project required from 100 to 300 workers and injected \$16 million into the local economy. Moreover, each of the next three phases of the project will add direct employment of 150 jobs, as well as indirect jobs and millions of dollars every year in the Pokemouche region. Atlantic stated that this does not represent a "windfall profit" on the backs of Canadian textile manufacturers.

Kute-Knit

Kute-Knit submitted that, based on the evidence, it is clear that Atlantic has focussed its efforts on the manufacture of carded cotton or polyester/cotton yarns. Kute-Knit indicated that Atlantic has provided no evidence of production of combed yarns in 2001 and only projections of production of 100-percent-combed cotton yarns and combed polyester/cotton yarns for the last six months of 2002, should tariff relief be terminated. Therefore, Atlantic has no history of sales to Canadian apparel manufacturers for a product that it has yet to produce. In this regard, Kute-Knit indicated that, on numerous occasions, the Tribunal has stated that it is the responsibility of the domestic producer to provide evidence, not just assertions or allegations, of its ability to produce an identical or substitutable product. Kute-Knit submitted that Atlantic should, first, provide to the Tribunal proof of sustained production of the above-noted ring-spun yarns capable of meeting domestic demand, as well as actual proof of domestic sales to apparel manufacturers. With respect to Atlantic's attempt to show that, by virtue of new technology, a carded product is the equivalent of similar sized combed yarns and should be considered substitutable for the latter, Kute-Knit indicated that, in the past, the Tribunal has rejected similar arguments.

OTHER INFORMATION

The Department of Foreign Affairs and International Trade (DFAIT) informed the Tribunal that Canada maintains quota restraints on polyester/cotton blended yarns (category 24.0), imported from Chinese Taipei. Accordingly, this coverage includes the subject yarns of tariff item Nos. 5509.53.10, 5509.53.20, 5509.53.30 and 5509.53.40. Moreover, DFAIT indicated that Canada does not maintain any quantitative import restrictions on yarns covered by heading Nos. 52.05 and 52.06.

DFAIT also indicated that it would consider requests for ex-quota entry on textile inputs where a recommendation has been made by the Tribunal to remove 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.

As noted above, Cavalier indicated that heather yarns, measuring 190 decitex or less, are entering Canada under the duty-free provisions, primarily from low-cost countries such as Pakistan and India. Cavalier stated that these yarns are specifically excluded from duty relief by requiring that the duty-free yarns be "unbleached" and by the words "other than mock twist". On January 9, 2002, the Tribunal sent Cavalier's submission to the Canada Customs and Revenue Agency and indicated that the foregoing raised some enforcement issues relating to its mandate.

ORAL ARGUMENTS

CCKA/Agmont

The CCKA argued that the pressure on the knitting industry is quite fierce because the retailing community, led by Wal-Mart, demands low prices. If price targets are not met, retailers turn to imports of apparel from low-wage economies, such as China. In this regard, the CCKA indicated that domestic shipments of broad knitted fabrics in Canada declined by 22 percent from 2000 to 2001. The CCKA argued that, while there are some points of agreement and some points of controversy regarding the quality of ring-spun yarns made from different cottons, Canadian knitters have great confidence in those products, which they are importing from offshore. Moreover, knitters have been importing these products whether the price is high or depressed.

In Agmont's case, the CCKA argued that the company could not afford to pay as much for North American ring-spun yarns as for the imports that it uses. The CCKA argued that, although there are very minor savings to be achieved if that switch were made, Agmont would be in a situation, in respect of quality, where it would need to give its customers a lower price for knitted goods made of North American yarns than for knitted goods made of offshore yarn on the same machinery.

The CCKA submitted that NAFTA provides for the use of TPLs. The CCKA also argued that NAFTA has had the effect of creating a two-tier market where the market for NAFTA-qualified goods commands a somewhat higher fabric price than the market for yarns for fabrics that do not need to be NAFTA-qualified. The CCKA argued that Atlantic's business plan for the Pokemouche facility appears to have been conceived without consideration of these two facts. The CCKA submitted that Atlantic suffered some adversities, such as the recession and the effects of September 11, 2001, which were beyond management control. The CCKA argued, however, that the CBTPA should have been taken into consideration, since the legislation was signed into law in the United States in May 2000, before the start-up of construction of the Pokemouche facility.

In terms of benefits and costs, the CCKA argued that the termination of tariff relief would have a negative impact on the knitting industry because the tariff would result in an increase of approximately 7.6 percent in the landed cost of the subject yarns. Since the industry is losing money, the CCKA argued that the imposition of the tariff would create more bankruptcies. The CCKA submitted that it would have been more logical for Atlantic to argue against imposing the tariff until the TPLs are exhausted, or perhaps not to argue at all, in order to preserve the viability of the knitters on which Atlantic depends. The CCKA stated that Atlantic's big opportunity lies some distance into the future when the TPLs are exhausted, but that this does not depend on the tariff. The CCKA argued that, if the re-establishment of duties does not bring the price of the subject yarns up to a level where Atlantic's yarn has better value in the eyes of the knitting industry, then there would be perhaps no benefit at all for Atlantic.

The CCKA argued that some of Atlantic's business aspirations, namely, a shift from carded to combed ring-spun yarns (21s to 24s) for T-shirts, as well as the requirement for combed ring-spun yarns in the weaving of bed sheets, cover non-subject yarns. Moreover, the CCKA argued that a major proportion of Atlantic's sales to date and its planned future sales to the United States have nothing to do with the review of this case.

The CCKA submitted that Atlantic has not demonstrated that the Pokemouche facility can make fine combed yarn competitively and that there is only sparse evidence that it has achieved market acceptance in the Canadian market in respect of the carded yarn whose production began last October. The

CCKA submitted that the customary three years should certainly be appropriate for revisiting this matter. According to the CCKA, this would give everyone time to understand the significance of the TPLs and the status of their exhaustion. In the alternative, the CCKA suggested that the Tribunal split the difference between the time proposed by Atlantic and the time proposed by CCKA.

Main

Main argued that it purchases the subject yarns on the basis of the following considerations: availability, price that is always traditionally lower, quality and uniformity. Main argued that it is now faced with Wal-Mart, which is interested in nothing but price. In this context, Main argued that, should duties be re-imposed on the subject yarns, it would not be able to pass on this extra expense to its customers. As a result, it would lose revenues and would experience real-time losses of \$2.5 million, which, in turn, would affect employment. Main argued that companies such as itself are able to mass-produce at a low markup and that, when a bit of markup is taken away in this type of market situation, the immediate effect is the loss of money. Main argued that, if the tariff relief were terminated, Main would not buy one extra kilogram of yarn from Atlantic, but that Main and others, which are in a very sensitive and labour intensive industry, would be forced to shut down.

Laxer

Laxer argued that, based on the evidence, identical or substitutable yarns are not available. In addition, Laxer argued that carded and combed yarns cannot be substituted for one another as a matter of law and as a matter of fact. In this regard, Laxer indicated that Atlantic has recognized the need for combed ring-spun yarns since it has advanced its schedule for the introduction of combing machines in its facility. Laxer submitted that there is a large portion of the Canadian textile industry that uses and depends on the subject yarns to assure that they can provide high-quality, low-cost goods for sale in Canada and the United States. Laxer submitted that Atlantic cannot or will not supply such yarns. Laxer argued that, should tariff relief be terminated, thin margins for knitters will become thinner to cover the added cost in an industry that is already distressed. Laxer submitted that knitters would not become Atlantic's clients, as they will be out of business before they can ever afford Atlantic's prices. Laxer argued that Atlantic has received numerous concessions from Canadian governments and that an additional concession in the form of duties on the subject yarns would simply decrease the demand for yarn and increase the financial distress in the knitting industry.

Kute-Knit

Kute-Knit argued that, for close to six years, a viable arrangement has existed, which was achieved after extensive consultations with the textile spinners and knitters. Kute-Knit argued that the removal of tariff relief was never an essential component of Atlantic's original business plan for its Pokemouche facility. In this regard, Kute-Knit indicated that Atlantic was aware of the duty-free status of the subject yarns when it went ahead with Phase 1 of its project. Kute-Knit argued that, over the years, the textile reference process has established some ground rules, which have been expressed in case law. In this connection, Kute-Knit referred to Tribunal cases dealing with the onus on a supplier to make its product line known in the marketplace and evidence to support a conclusion of imminent production, as well as evidence of the ability of a domestic producer to produce identical or substitutable goods.

Atlantic

With respect to the market for the subject yarns, Atlantic indicated that non-dutiable imports of the subject yarns, i.e. imports from the United States and Mexico, have recently increased by substantial quantities and now represent an important share of the total imports of the subject yarns. Atlantic submitted that the Tribunal should not consider imports from these countries in the arguable cost of removing the tariff.

Atlantic argued that the Wal-Mart issue is independent of the tariff issue and should not be taken into consideration in determining the outcome of this review. Atlantic also argued that the recession affects everyone, including the spinners and knitters, and should not be taken into consideration by the Tribunal in its deliberations.

Atlantic argued that its ability to produce and sell the entire yarn count of the subject yarns, i.e. 32s and above, is not in question because it has produced and sold subject ring-spun yarn count. Atlantic argued that it had dealt with all the quality issues satisfactorily and that there should be absolutely no question that the quality of Atlantic's yarns is such that, for the purposes of this review, they are identical or substitutable. Atlantic also submitted that quality, at least for this commodity product, is subsumed in almost every case by the price at which the product is available. With respect to the production and sale of carded ring-spun yarns, the introduction of combed ring-spun yarns and the pricing of its products, Atlantic argued that the record speaks for itself.

Atlantic argued that most of the importers and users were not represented at the hearing and did not provide any evidence that would assist the Tribunal in its deliberations. On the question of net benefits, Atlantic indicated that, at the hearing, one importer and three knitters/users suggested that removing the tariff relief would have a catastrophic cost impact on fabric and garment pricing, which, in turn, would result in a devastating impact on employment and investment in the sector. In this regard, Atlantic argued that the percentage of the total imports of the subject yarns represented by the users at the hearing raises a question as to whether in fact they had sufficient standing to appear at the hearing and represent the true facts of the industry.

Atlantic argued that, should tariff relief be terminated, it and other vendors might not be able to increase pricing even by the real cost impact, i.e. 7.6 percent, in the current competitive environment. Atlantic submitted that vendors might have to squeeze their higher margins on non-subject yarns. Based on the evidence, i.e. the percentage of such cost of the total cost of producing a fabric or resulting garment and of the overall operations of the integrated users in particular, Atlantic argued that the doomsday scenario, certainly in the case of Main, is perhaps overreaching.

Atlantic argued that it would derive significant benefit from obtaining a share of the import replacement of the 13.5 million kilograms because this would be additional capacity utilization for the Pokemouche facility. Atlantic argued that, by combining the capacity utilization gained from the subject yarns and increasing its market share of non-subject yarns which are already subject to duty and in respect of which Atlantic has demonstrated that it is competitive, it would derive the required level of capacity utilization to achieve the desired pricing.

Atlantic submitted that, should the Tribunal decide to recommend an extension of the tariff relief, there is enough evidence on the record to recommend an extension that is only for a predetermined shorter period than three years, given the fragility of Atlantic's situation today. In this regard, Atlantic submitted that the Tribunal should consider a six-month period, only on combed ring-spun yarns of 32s and over.

ANALYSIS

As noted previously, the tariff relief covers:

- (a) certain combed or carded ring-spun cotton and polyester/cotton yarns, measuring 190 decitex or less (31s and finer), for use in the manufacture of knitted fabrics or knitted garments;
- (b) certain combed or carded ring-spun cotton two-ply yarns, measuring less than 125 decitex per single yarn (finer than 47s), for use in the manufacture of knitted fabrics or knitted garments; and
- (c) certain combed ring-spun polyester/cotton yarns, measuring 492 decitex, 328 decitex and 246 decitex (12s, 18s and 24s), for use in the manufacture of knitted children's wear.

Before proceeding with its analysis, the Tribunal must dispose of Atlantic's claim that the parties at the hearing did not have sufficient standing to represent the knitting industry. The Tribunal notes that the CCKA, which represents a significant number of knitters that are users of the subject yarns, appeared at the hearing. The evidence given at the hearing was also supplemented by information gathered through the Tribunal's questionnaires, which were sent to all known potential importers/users of the subject yarns. Therefore, the Tribunal is satisfied that the evidence on the record, which is comprised of the testimony given at the hearing and the information collected by the Tribunal, is representative of the users of the subject yarns.

Table 2 shows the volume, value and unit values of the total imports of the subject yarns reported by Statistics Canada in 1999, 2000 and the first nine months of 2001 compared to the same period in 1999 and 2000. In 2000, the volume of the subject yarns was approximately 13.5 million kilograms, valued at \$55.3 million, a 9 percent increase in volume over 1999. Combed ring-spun yarns accounted for 64 percent of the total imports in volume reported in 2000. The average value for duty for combed ring-spun yarns, measuring 190 decitex or less, was \$4.34/kg in 2000 compared to \$3.72/kg for carded ring-spun yarns.

In essence, the knitting industry supported the continuation of the tariff relief because such relief has enabled the knitting industry to maintain its production base in Canada and enabled knitters and their customers to remain competitive in the face of increasing imports of finished garments. On the other hand, Atlantic submitted that the tariff relief order should be allowed to expire as scheduled, since it has the ability and the production capacity to produce identical or substitutable yarns.

In considering whether the tariff relief should be continued or amended, the Tribunal examined the three specific issues outlined in its notice of review dated November 23, 2001. These were:

- the availability of identical or substitutable ring-spun yarns from domestic producers and their comparability with the subject yarns;
- the substitutability of carded ring-spun yarns for combed ring-spun yarns; and
- the impact on operations (i.e. effect on sales, prices, profitability and employment) should the tariff relief order be renewed.

	1999	2000	Jan.-Sept.		
			1999	2000	2001
VOLUME (000 kg)					
Carded					
190 decitex or less (31s and finer)	4,386	4,862	3,510	3,853	3,767
Combed					
190 decitex or less (31s and finer)	8,001	8,252	6,274	6,673	5,048
492 decitex, 328 decitex and 246 decitex (12s, 18s and 24s)	0	418	0	363	234
Total	12,387	13,532	9,784	10,889	9,049
VALUE FOR DUTY (\$000)					
Carded					
190 decitex or less (31s and finer)	16,200	18,073	12,992	14,360	13,807
Combed					
190 decitex or less (31s and finer)	34,926	35,811	27,229	29,044	22,607
492 decitex, 328 decitex and 246 decitex (12s, 18s and 24s)	0	1,374	0	1,191	784
Total	51,126	55,258	40,221	44,595	37,198
UNIT VALUE FOR DUTY (\$/kg)					
Carded					
190 decitex or less (31s and finer)	3.69	3.72	3.70	3.73	3.67
Combed					
190 decitex or less (31s and finer)	4.37	4.34	4.34	4.35	4.48
492 decitex, 328 decitex and 246 decitex (12s, 18s and 24s)	0.00	3.29	0.00	3.28	3.35
Total	4.13	4.08	4.11	4.10	4.11

Source: Statistics Canada

With respect to the availability of identical or substitutable carded ring-spun yarns measuring 190 decitex or less, the Tribunal focussed its attention on the evidence provided by Atlantic with respect to its production and sales of these yarns. The Tribunal notes that Atlantic produced and sold non-subject carded yarns in the coarser counts (below 31s) in the last quarter of 2001. For the first six months of 2002, it projects an increase in this activity and estimates that it will produce and sell carded ring-spun yarns in counts 31s and finer.¹⁴ In this connection, the Tribunal notes that, based on information contained in a price list dated January 10, 2002, submitted by Agmont,¹⁵ Atlantic is not yet in a position to provide carded ring-spun yarns in counts 32/1. This was confirmed during cross-examination of the witness for Agmont.¹⁶

14. Tribunal Exhibit TA-2001-001-24 (protected), Administrative Record, Vol. 2 at 77-78.

15. Manufacturer's Exhibit B-2 (protected), Document D, Administrative Record, Vol. 6.1.

16. *Transcript of In Camera Hearing*, 6 March 2002, at 4.

Furthermore, Atlantic indicated that the carded ring-spun yarns that it currently sells in Canada have an average count of 24/1.¹⁷

As far as the availability of identical or substitutable combed ring-spun yarns is concerned, the Tribunal notes that, based on the evidence, Atlantic is presently not in a position to supply such yarns, including those in the coarser range, i.e. 12s, 18s and 24s, required for use in the manufacture of knitted children's wear. However, Atlantic stated that state-of-the-art equipment is to be installed in its Phase 1 facility, which will enable it to produce combed yarns by the end of August 2002.¹⁸ As noted in Table 2, only a small volume of the coarser yarns was imported during the 2000-2001 period. Kute-Knit, a user of these yarns, however, indicated that it must have the option to import such yarns because the fashion industry changes quickly and, in the future, a customer may want to work on a program that requires these yarns and Kute-Knit has to be price competitive.¹⁹

Turning to the substitutability of carded ring-spun yarns for combed ring-spun yarns, the Tribunal notes that, during the review, there were some points of agreement and some points of controversy regarding the quality of fabrics made with carded yarns and combed yarns. Atlantic submitted that the advances made in carding technology have significantly bridged the gap between carded yarns and combed yarns made on older equipment. In this regard, Atlantic stated that imported yarns would have to be "supercombed" to match or improve on Atlantic's quality of carded yarns. On the other hand, importers/users made some compelling arguments that Atlantic's carded yarns are not substitutable for the combed yarns because, *inter alia*, the DK 903 carding machines used by Atlantic are mainly used in high labour market countries for high volume production, specifically in heavier non-subject yarns. In addition, Laxer indicated that garments labelled "combed cotton" have a higher consumer recognition and often command a higher price. In this connection, Atlantic confirmed that it is a matter of law that one cannot substitute carded yarns for combed yarns in such garments.²⁰

Based on the evidence, the Tribunal is not convinced that carded ring-spun yarns are substitutable for combed ring-spun yarns. Furthermore, the Tribunal notes that, at the hearing, Atlantic stated that it is going to install nine combing machines in its Phase 1 facility in the summer of 2002, which indicates that Atlantic has recognized that it must respond to the demand for such yarns. This also lends support to the arguments made by the knitting industry that carded yarns are not substitutable for combed yarns.

From the foregoing, the Tribunal believes that Atlantic is not, as yet, able to respond to the specific requirements of the knitting industry for certain ring-spun yarns covered by the tariff relief order. In this regard, the Tribunal has stated, on a number of occasions in the past, that domestic producers must provide evidence to support a conclusion of imminent production, such as orders on hand and actual sales.²¹ Moreover, the onus rests squarely with domestic producers to provide evidence, not just assertions or allegations, of their ability to produce identical or substitutable products.²² Therefore, the Tribunal concludes that Atlantic has not demonstrated, to the Tribunal's satisfaction, that these yarns will be imminently available to potential buyers.

17. *Transcript of Public Hearing*, 7 March 2002, at 350.

18. *Ibid.* at 319.

19. *Ibid.* at 246.

20. *Ibid.* at 387.

21. See, for example, *Re Request for Tariff Relief by Tribal Sportswear* (24 August 1999), TR-98-019 at 10.

22. See, for example, *Re Request for Tariff Relief by Peerless* (24 January 2001), TR-2000-001 at 6.

In terms of impact on operations, importers/users of the subject yarns argued that, should duties be re-imposed, their operations would be adversely affected, since they would not be able to pass on this extra expense to their customers in a competitive environment where “the price is the biggest issue . . . [and] [p]rice is king”.²³ As a result, the knitting industry would lose money, and jobs would be lost. On the other hand, Atlantic argued that the “doomsday” scenario put forward by one of the knitters is somewhat exaggerated and that it would derive significant benefit from obtaining a share of the import replacement of 13.5 million kilograms of subject yarns because this would be additional capacity utilization for its Pokemouche facility.

The evidence is clear that importers/users of the subject yarns have received significant benefits from the tariff relief. On the basis of the import data reported by Statistics Canada, for 1999, 2000 and the first nine months of 2001, primary direct benefits of tariff relief on the subject yarns were approximately \$4.6 million, \$4.5 million and \$2.6 million respectively. Mr. Stephen Aikins, President of Agmont and of the CCKA, indicated that the circular knitting industry is basically a very cut-throat business where “our customers won’t pay us literally one penny more for our fabric.”²⁴ It is evident to the Tribunal that tariff relief on the subject yarns has been highly beneficial.

Atlantic indicated that it has not been able to achieve the prices of yarns indicated on its price list, which reflect the high cost of cotton purchased in early 2001. Atlantic argued that, should the duties be re-introduced on the subject yarns, its identical or substitutable yarns would remain competitively priced with the imports of the subject yarns. In this regard, Atlantic presented price projections based on a scenario of very high utilization of plant capacity,²⁵ which, according to Atlantic, would enable its yarns to become very price competitive with the subject yarns. However, the Tribunal has difficulty in accepting the assertions put forth by Atlantic at the hearing, given the current state of the market. Furthermore, the Tribunal is not persuaded that Atlantic will be in a position to achieve these high capacity utilization rates without showing, first, its ability to produce identical or substitutable yarns at competitive prices. In assessing the prices at which Atlantic would sell in the market if the duties were re-introduced, the Tribunal is also reluctant to base its analysis on price projections, which are necessarily speculative.

Much of Atlantic’s case is based on the premise that it will have, in the not too distant future, identical or substitutable yarns available to the marketplace in adequate commercial quantities and at competitive prices and that its plant will be operating at near capacity. As the foregoing is based on speculation, the Tribunal is unable, at present, to conclude that Atlantic will be in a position to produce and supply, in commercial quantities and at competitive prices, identical or substitutable yarns.

On the basis of the information available, the Tribunal believes that tariff relief will continue to provide a degree of stability for users of the subject yarns and provide benefits in the form of reduced costs, thereby enabling them to maintain their competitive position in a very price-sensitive marketplace.

The Tribunal notes that some factors that led it to recommend, in June 1999, that tariff relief be granted for a further three-year period have changed, notably the commencement of Atlantic’s operations in October 2001 as a producer of ring-spun yarns. Atlantic has made considerable investment in its Phase 1 facility at Pokemouche and plans to enhance its production capabilities with combing machinery in the very near future. Recognizing that Atlantic has provided sufficient evidence that it may have the capability to produce identical or substitutable yarns in the not too distant future, the Tribunal recommends that tariff

23. *Transcript of Public Hearing*, 6 March 2002, at 68.

24. *Ibid.* at 18.

25. Manufacturer’s Exhibit A-6 (protected), Administrative Record, Vol. 6.

relief be extended for an 18-month period. This should provide Atlantic with sufficient time to vigorously pursue the subject yarn business and demonstrate to potential users that it can provide yarns at a competitive price that would meet their requirements.

RECOMMENDATION

In light of the foregoing, the Tribunal hereby recommends to the Minister that tariff relief, as provided for certain ring-spun yarns by tariff item Nos. 5205.14.20, 5205.15.20, 5205.24.20, 5205.26.20, 5205.27.20, 5205.28.20, 5205.35.20, 5205.46.20, 5205.47.20, 5205.48.20, 5206.14.10, 5206.15.10, 5206.24.10, 5206.25.10, 5509.53.10, 5509.53.20, 5509.53.30 and 5509.53.40, be continued beyond June 30, 2002, for an additional period of 18 months.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Richard Lafontaine

Richard Lafontaine
Member

James A. Ogilvy

James A. Ogilvy
Member