

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL



TRIBUNAL CANADIEN  
DU COMMERCE  
EXTÉRIEUR

**REPORT TO  
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY  
TANTALUM MINING CORPORATION OF  
CANADA LIMITED  
REGARDING  
A FILTERING FABRIC**

**MARCH 21, 2001**

**TANTALUM MINING CORPORATION OF  
CANADA LIMITED**

**REQUEST NO.: TR-2000-003**

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## INTRODUCTION

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

Pursuant to the Minister's reference, on September 25, 2000, the Tribunal received a request from Tantalum Mining Corporation of Canada Limited (Tantalum) for the removal, for an indeterminate period of time, of the customs duty on importations, from all countries, of filtering fabric for use in the manufacture of cesium formate. As part of its request, Tantalum asked that any tariff relief granted be effective as of July 1, 1998.

On November 8, 2000, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation,<sup>2</sup> which was distributed to known interested parties. The notice described the fabric under investigation as "filtering fabric, solely of non-textured polyester filaments, with a loom width exceeding 3 metres, for use in the manufacture of cesium formate (the subject fabric)".

As part of the investigation, the Tribunal's research staff sent questionnaires to potential domestic producers of fabrics identical to or substitutable for the subject fabric. Questionnaires were also sent to potential users/importers of the subject fabric. A letter and a sample of the subject fabric were sent to the Canada Customs and Revenue Agency (CCRA), requesting its advice as to the tariff classification of the subject fabric and an analysis of its technical characteristics. In addition, the Department of Foreign Affairs and International Trade (DFAIT) was asked to provide current information on any quantitative import restrictions on the subject fabric, and the Department of Industry was informed of the request and asked to provide any relevant comments. The Department of Finance was also informed of the request.

A staff investigation report summarizing the information received from these departments, Tantalum, questionnaire respondents and other interested parties was provided to parties to the proceedings. There were no submissions filed with the Tribunal following distribution of the staff investigation report.

A public hearing was not held for this investigation.

## PRODUCT INFORMATION

The subject fabric is described as a filtering fabric. It is 3.21 metres wide and made of 4-thread broken twill-weave fabric. It is woven in the warp direction from 3-ply yarns of non-textured, man-made (polyester) synthetic filaments and textured, man-made (polyester) synthetic filaments, and in the weft direction, from 0.5-millimetre diameter non-textured, man-made (polyester) synthetic monofilaments. This width is required so that there is no longitudinal seam on the belt filter cloth, which could allow solids to leak during the filtration process and cause problems during the subsequent processing of a filtrate solution. The fabric itself is not processed, but is used as a filtration medium for the separation of a cesium sulphate solution from solid impurities during the manufacturing process for cesium formate. According to Tantalum, the unique chemical and physical characteristics of cesium formate make the substance attractive as a drilling

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

2. C. Gaz. 2000.I.3477.

fluid for the oil and gas industry; however, cesium formate is considerably more expensive than traditional drilling fluids. Tantalum believes that cesium formate is not manufactured at any other site in the world. Tantalum imports the subject fabric from Germany (via the United States).

The CCRA indicated that the subject fabric is classified under tariff item No. 5911.40.00 of the schedule to the *Customs Tariff*<sup>3</sup> and is presently dutiable at 16 percent *ad valorem* under the most-favoured-nation tariff and at 10 percent *ad valorem* under the General Preferential Tariff, and is duty-free under the Mexico tariff, the Chile tariff, the U.S. tariff, the Least Developed Country Tariff and the Canada-Israel Agreement tariff.

## REPRESENTATIONS

### Requester

#### Tantalum

Tantalum is a wholly owned subsidiary of Cabot Corporation of Boston, Massachusetts. Its mine site is located at Bernic Lake, Manitoba. Tantalum's principal products are spodumene, which is used as a source of lithium in the manufacture of glass, and tantalum concentrate, which is used in the manufacture of tantalum metal. A third mineral, pollucite, is mined and milled on site and used to manufacture cesium formate.

Tantalum stated that no identical or substitutable fabrics are available from domestic sources. It further stated that, while there are two filter cloth suppliers in Canada, neither of these companies is able to produce cloth of the required specifications.

Tantalum also stated that one of the main benefits of tariff relief would be the continued optimum operation of the belt filter – an essential piece of equipment in the manufacture of cesium formate. According to Tantalum, high filtrate quality reduces subsequent processing requirements and gives lower equipment fouling, which reduces unit production costs. Tantalum stated that unit cost is a critical factor in the success of introducing a new product, such as cesium formate, into the marketplace and establishing market share. Tantalum further stated that, when the unit costs between cesium formate and traditional drilling fluids are compared, cesium formate is at a considerable disadvantage, notwithstanding the safety, environmental and technical advantages offered by the product. Thus, Tantalum argued that customs duties on the filter cloth, which are included in the unit cost of production of cesium formate, are a negative factor affecting a customer's decision to use cesium formate as a drilling fluid.

### Domestic Users/Importers of the Subject Fabric

#### McCain Foods Ltd.

McCain Foods Ltd., of Florenceville, New Brunswick, indicated that it did not import the subject fabric.

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

## Domestic Producers of Allegedly Identical or Substitutable Fabrics

### AstenJohnson

AstenJohnson<sup>4</sup> was established in 1901 in Montréal, Quebec, to supply woven paper machine cloth to local paper mills. It now has 10 manufacturing plants in North America that make woven meshes that are marketed worldwide.

AstenJohnson stated that it currently manufactures or could easily produce the fabric required by Tantalum. The company also stated that it currently weaves a product called ETX, in 12-metre widths. This product is sold to the pulp and paper industry. AstenJohnson indicated that it could supply this fabric, in smaller widths, to Tantalum as an identical or substitutable fabric. The company further indicated that it would be contacting Tantalum directly to pursue this opportunity.

### Madison Filtration Inc.

Madison Filtration Inc., of Kirkland, Quebec, indicated that it did not produce identical or substitutable fabrics in Canada.

### Crosible Filtration Ltd.

Crosible Filtration Ltd., of Guelph, Ontario, indicated that it did not produce identical or substitutable fabrics in Canada.

### Albarrie Canada Limited

Albarrie Canada Limited, of Barrie, Ontario, indicated that it did not oppose the request.

## OTHER INFORMATION

DFAIT informed the Tribunal that Canada does not maintain quota restraints on the subject fabric classified under tariff item 5911.40.00 and that it is not subject to any quantitative import restrictions.

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

## ANALYSIS

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 to recommend tariff relief is based on the extent to which it considers that such tariff relief would provide net economic gains for Canada.

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4. A company named JWI Ltd. was also sent a questionnaire. However, the Tribunal's staff was informed that this company and AstenJohnson merged in September 1999.

Tantalum claimed that no identical or substitutable fabrics are available from domestic sources and that the two Canadian filter cloth suppliers, known to it, were unable to produce cloth of the required specifications. According to Tantalum, the continued optimum operation of the belt filter, which uses the subject fabric exclusively, reduces subsequent processing requirements and gives lower equipment fouling, thereby reducing production costs. Tantalum also stated that the duties payable on the subject fabric affect the unit production costs of cesium formate, which, in turn, affect a customer's decision to use cesium formate as opposed to another drilling fluid.

AstenJohnson, the only domestic producer to oppose the request, stated that it did or could produce an identical or substitutable fabric. However, the Tribunal has stated in the past<sup>5</sup> that it is the responsibility of domestic producers to provide evidence, not assertions or allegations, of their ability to produce identical or substitutable fabrics. While the Tribunal recognizes that AstenJohnson may be able to manufacture a fabric similar to the subject fabric, this would involve decreasing, by a substantial amount, the current width of the fabric that it currently produces and sells to the pulp and paper industry. Furthermore, by AstenJohnson's own admission, this business would be a very small percentage of its current volume, and there would be no immediate effect on its operations, should tariff relief be granted. Although AstenJohnson has alleged that it intends to increase sales of specialty fabrics outside the pulp and paper industry, including the mining industry, the Tribunal has not been presented with any evidence of current or potential sales to the mining industry, nor does it have any evidence that AstenJohnson's products would be acceptable to Tantalum.

Accordingly, the Tribunal is of the opinion that fabrics that are identical to or substitutable for the subject fabric are not produced in Canada and, therefore, concludes that there would be no immediate cost to the domestic industry, if tariff relief were granted. Regarding AstenJohnson's allegations that future losses, with respect to potential new business, could occur should tariff relief be granted, the Tribunal notes that these allegations have not been substantiated or quantified. Accordingly, the Tribunal cannot attribute any costs to the domestic industry, should tariff relief be granted.

Tariff relief would provide a yearly benefit of more than \$20,000 to Tantalum. Any other potential users of the subject fabric would also benefit accordingly. Furthermore, the filter for which the subject fabric is used reduces Tantalum's subsequent processing requirements and gives lower equipment fouling, which reduces unit production costs.

In summary, the Tribunal finds that the granting of tariff relief would provide net economic gains to Canada.

With respect to Tantalum's request for retroactive tariff relief, the Tribunal has stated, in previous cases, that it will not recommend such relief other than in exceptional circumstances. Tantalum has provided no evidence to justify such a request. Therefore, the Tribunal is not persuaded that the current circumstances are so exceptional as to warrant a recommendation for retroactive tariff relief.

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5. See, for example, *Camp Mate* (10 June 1996), TR-95-051 (CITT); *Lady Americana Sleep Products* (12 February 1997), TR-95-064 and TR-95-065 (CITT); *Cambridge Industries* (12 February 1999), TR-98-001 (CITT); *Helly Hansen Canada* (19 March 1999), TR-97-015, TR-97-016 and TR-97-020 (CITT); *Jones Apparel Group Canada* (8 July 1999), TR-98-017 (CITT); *Tribal Sportswear* (24 August 1999), TR-98-019 (CITT); and *Western Glove Works* (February 4, 2000), TR-99-003 (CITT).

**RECOMMENDATION**

The Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries of filtering fabric, solely of non-textured polyester filaments, with a loom width exceeding 3 metres, of subheading No. 5911.40, for use in the manufacture of cesium formate.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member