REPORT NO. 328

INVESTIGATION INTO THE ALLEGED CIRCUMVENTION OF
ANTI-DUMPING DUTIES ON IMPORTS OF TALL OIL FATTY ACID
ORIGINATING IN OR IMPORTED FROM SWEDEN, THROUGH
IMPORTING FROM FINLAND: FINAL DETERMINATION
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The International Trade Administration Commission of South Africa herewith presents its Report No.328: INVESTIGATION INTO THE ALLEGED CIRCUMVENTION OF ANTI-DUMPING DUTIES ON IMPORTS OF TALL OIL FATTY ACID ORIGINATING IN OR IMPORTED FROM SWEDEN, THROUGH IMPORTING FROM FINLAND: FINAL DETERMINATION

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CHIEF COMMISSIONER

PRETORIA
12-02-2010
1. APPLICATION AND PROCEDURE

1.1 APPLICANT
The application was lodged by ITS Trade, on behalf of Industrial Oleochemical Products (Pty) Ltd (the Applicant), being the sole producer of the subject product in SACU.

1.2 ALLEGATIONS BY THE APPLICANT
The Applicant alleged that subsequent to the imposition of the provisional duties on imports of tall oil fatty acid originating in or imported from Sweden, certain importers shifted the sourcing of the subject product from Arizona Chemical in Sweden to its related company in Finland, hence a case of country hopping.

1.3 DATE OF ACCEPTANCE OF APPLICATION
The Commission accepted the application as being properly documented on 5 June 2009.

1.4 INVESTIGATION PROCESS
On 17 June 2009, the Government of Finland was notified of the receipt of a properly documented application, in terms of Article 5.5 of the Anti-Dumping Agreement. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential version of the application.

The Commission initiated an investigation into the alleged circumvention of anti-dumping duties on imports of tall oil fatty acid originating in or imported from Sweden, through importing from Finland, pursuant to Notice No. 998 of 2009, published in Government Gazette No. 32415 dated 24 July 2009.

The Commission considered all information submitted by interested
parties and found that circumvention of the anti-dumping duties, in the form of country hopping is taking place, and that dumping of tall oil fatty acid originating in or imported from Finland is taking place at a de-minimis level. The Commission therefore considered making a final determination to terminate the investigation. A letter of "essential facts" being considered was sent to all interested parties, inviting them to submit comments.

After considering all the information and comments on the "essential facts" letter, the Commission made a final determination that circumvention, in the form of country hopping is taking place, and that dumping of tall oil fatty acid originating in or imported from Finland is taking place at a de-minimis level.

1.5 INVESTIGATION PERIOD
The investigation period for dumping is from 1 July 2008 to 31 March 2009.

1.6 PARTIES CONCERNED
1.6.1 SACU industry
The SACU industry consists of only one producer, being Industrial Oleochemical Products (Pty) Ltd.

1.6.2 Exporter/Foreign Manufacturer
Only one exporter of the subject product, Arizona Chemical Oy Finland was identified and responded fully to the Commission's exporter questionnaire.

1.6.3 Importers
The following SACU importers responded to the Commission's importers questionnaires:
(a) Hobart Trading
(b) Rolfes Colour Pigments International
2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description
The imported product is described as tall oil fatty acid. It is sold under the name Sylfat 2.

2.1.2 Tariff classification, other applicable duties and rebates

Table 2.1.2: Tariff classification

<table>
<thead>
<tr>
<th>Tariff subheading</th>
<th>Description</th>
<th>Rates of duty</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>General</td>
</tr>
<tr>
<td>3823.13</td>
<td>Tall oil fatty acids</td>
<td>Kg</td>
</tr>
</tbody>
</table>

2.1.3 Import Statistics
The import statistics indicated that the volume of the alleged dumped imports from Finland accounted for 11 per cent of the total imports of the subject product during the period of investigation for dumping.

2.1.4 Country of origin/export
The subject product originates in or is imported from Finland.

2.2 SACU PRODUCT

2.2.1 Description
The SACU product is described as tall oil fatty acid. It is sold under the name BR4-4.

2.2.2 Tariff classification
The SACU product is classified under tariff sub-heading 3823.13.
2.3 LIKE PRODUCTS

2.3.1 General

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine at the outset whether the product produced by the SACU industry is a "like product" to that originating in or imported from Finland.

Table 2.3.1 Like product determination

<table>
<thead>
<tr>
<th></th>
<th>Imported product</th>
<th>SACU product</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw materials</td>
<td>Crude tall oil</td>
<td>Crude tall oil</td>
</tr>
<tr>
<td>Physical characteristics</td>
<td>Combination of light colour,</td>
<td>Combination of light colour, very good colour stability and air drying properties</td>
</tr>
<tr>
<td>and appearance</td>
<td>very good colour stability and air drying properties</td>
<td></td>
</tr>
<tr>
<td>Tariff classification</td>
<td>3823.13</td>
<td>3823.13</td>
</tr>
<tr>
<td>Production process</td>
<td>Distillation and fractionation</td>
<td>Distillation and fractionation</td>
</tr>
<tr>
<td>Application or end use</td>
<td>Manufacture of alkyd resins</td>
<td>Manufacture of alkyd resins</td>
</tr>
<tr>
<td>Substitutability</td>
<td>The SACU product and the imported product are fully substitutable with no process changes.</td>
<td>The SACU product and the imported product are fully substitutable with no process changes.</td>
</tr>
</tbody>
</table>

After considering all the above factors, the Commission decided that the SACU and the imported products are "like products", for purposes of comparison, in terms of Article 2.6 of the Anti-Dumping Agreement, and Section 1 of the Commission’s Anti-Dumping Regulations.
3. SACU INDUSTRY

3.1 INDUSTRY STANDING

The Applicant provided the following information with regard to the support and/or opposition to the application:

**Table 3.1: Industry standing**

<table>
<thead>
<tr>
<th>Industry Standing</th>
<th>(Total domestic production of like goods for the 12 months preceding the lodging of the petition)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturer</td>
<td>Production volume-support application</td>
</tr>
<tr>
<td>Industrial Oleochemical Products</td>
<td>-</td>
</tr>
<tr>
<td>Total SACU</td>
<td>-</td>
</tr>
</tbody>
</table>

Based on the above, the Commission decided that the application can be regarded as being made by or on behalf of the domestic industry.
4. COUNTRY HOPPING

The import statistics obtained from the South African Revenue Service (SARS) showed that during December 2008 to March 2009, there were no imports from Sweden, whereas imports from Finland were increasing. The Commission found that this information indicated a commencement of a switch of suppliers, and decided based on this evidence, that circumvention in the form of country hopping was taking place.

Comments by Xikhovha Advisory (Xikhovha)

Xikhovha agrees with the conclusion set out in the essential facts letter that dumping is taking place at a de minimis level and that the investigation be terminated, but does not agree with the finding that circumvention, in the form of country hopping is taking place.

The Commission’s consideration

The Commission found that subsequent to imposition of the provisional duties against imports of tall oil fatty acid originating in or imported from Sweden, there was a switch of suppliers from a Swedish supplier to a related supplier in Finland. This was confirmed by the import statistics obtained from SARS, as well as the responses received from both the importer and the exporter concerned. In terms of ADR 60.8, this act constitutes country hopping.

Based on the above, the Commission concluded that information considered indicated a commencement of a switch of suppliers, hence a case of country hopping.
5. DUMPING

5.1 METHODOLOGY USED IN THIS INVESTIGATION
The information submitted by the exporter, Arizona Chemicals Oy and the two importers, Rolfes Colour Pigments and Hobart Trading, was considered by the Commission.

5.1.1 Normal Value

Calculation of normal value
The exporter sold the subject product in its domestic market during the period of investigation. Based on this information, a domestic selling price was determined.

Adjustments to normal value
The Commission allowed the following adjustments to the normal value:

- freight; and
- cost of payment terms.

Export sales
The exporter exported the subject product, Syfat 2, to SACU during the period of investigation. Based on this information, an export price for the product exported to SACU was determined.

Adjustments to export price
The Commission allowed the following adjustments to the normal value:

- freight; and
- cost of payment terms.
5.1.3 Margin of Dumping
A margin of dumping was determined to be 1.78 per cent when expressed as a percentage of the ex-factory export price.

Comments from ITS Trade
ITS Trade stated that the domestic selling prices normally include delivery cost (internal freight), and that if an adjustment for delivery cost is made in Finland, each domestic transaction’s delivery cost must be verified and the adjustments made to the specific transaction, and to not use an average delivery cost.

The Commission’s consideration
During verification, it was found that only a certain number of domestic transactions included delivery costs, which were verified. An adjustment for delivery cost was therefore made only to those transactions, and not averaged for all transactions.

Based on the above, the Commission decided that dumping of tall oil fatty acid originating in or imported from Finland is taking place at a de-minimis level.
The Commission decided that:

1. circumvention of the anti-dumping duties on imports of tall oil fatty acid originating in or imported from Sweden, through importing from Finland is taking place;

2. dumping of tall oil fatty acid originating in or imported from Finland is taking place at a \textit{de minimis} level.

Based on the above, the Commission decided to recommend to the Minister of Trade and Industry that the investigation be terminated.