

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**

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**

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**


Siyabulela Tsengiwe
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

Tariff subheading	Description		Rates of duty			
			General	EU	EFTA	SADC
3823.13	Tall oil fatty acids	Kg	10%	3.8%	7.5%	Free

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

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

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

Industry Standing	(Total domestic production of like goods for the 12 months preceeding the lodging of the petition)			
	Production volume-Support application	Percentage supporting application	Production volume opposing application	Production volume-neutral
Manufacturer				
Industrial Oleochemical Products	-	100%	-	-
Total SACU	-	100%	-	-

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, Sylfat 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.

6. DETERMINATION

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 *de minimis* level.

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