

Report No. 81

Investigation into the alleged dumping of aluminium overhead cable originating in or imported from India: Final determination

The International Trade Administration Commission of South Africa herewith presents its
**Report No. 81 INVESTIGATION INTO THE ALLEGED DUMPING OF ALUMINIUM
OVERHEAD CABLE ORIGINATING IN OR IMPORTED FROM INDIA: FINAL
DETERMINATION**



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CHIEF COMMISSIONER**

PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION INTO THE ALLEGED DUMPING OF ALUMINIUM OVERHEAD CABLE ORIGINATING IN OR IMPORTED FROM INDIA

SYNOPSIS

On 10 October 2003, the International Trade Administration Commission formally initiated an investigation into the alleged dumping of aluminium overhead cable (subject product), originating or imported from India. Notice of the initiation of the investigation was published in Notice No. 2536 of 2003 of Government Gazette No. 25524 dated 10 October 2003. The application was lodged on behalf of the South African Customs Union (SACU) industry by the Association of Electric Cable Manufacturers of South Africa (AECMSA), (the Applicant) which alleged that dumped imports from India were causing it material injury and a threat of material injury.

The investigation was initiated after the Commission considered that there was sufficient evidence to show that the subject product was being imported at dumped prices, causing material injury and/or a threat of material injury to SACU industry.

On initiation of the investigation, known producers and exporters of the subject product from India were sent foreign manufacturers questionnaires to complete. Known importers of the subject product were also sent importers questionnaires to complete.

The Commission made a preliminary determination to terminate the investigation as no dumping was found in respect of the only exporter from India during the period of investigation for dumping.

After considering the comments made by the Applicant to the preliminary report the Commission made a final determination on 15 December 2004, to recommend that the investigation into the alleged dumping of aluminium overhead cable originating or imported from India be terminated.

APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement), and ITA Act of 2002 (Act 71 of 2002).

1.2 APPLICANT

The application was lodged by Association of Electric Cable Manufacturers of South Africa "AECMSA" (the Applicant) on behalf of Malesela Taihan Electric Cable, being a producer of the subject product in the SACU.

1.3 DATE OF ACCEPTANCE OF APPLICATION

The Commission accepted the application as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 30 September 2003. The trade representative of India was advised accordingly.

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports of the subject product, originating in or imported from India were being dumped on the SACU market, thereby causing material injury and/or threat of material injury to the SACU industry. The basis of the alleged dumping was that the goods were being exported to South Africa at prices less than the normal value in the country of origin.

The Applicant alleged that as a result of the dumping of the products from India, the SACU industry was suffering material injury and/or threat of material injury in the form of:

- Price undercutting
- Price depression
- Decline in output
- Decline in sales
- Decline in productivity
- Decline in utilization of production capacity
- Negative effect on cash flow
- Decline in wages per employee
- Inability to raise capital
- Inability to show growth

1.5 INVESTIGATION PROCESS

The Commission, after establishing that there was a prima facie case of injurious dumping, decided to initiate the investigation. The investigation was initiated on 10 October 2003 in Government Gazette No. 25524 by Notice No 2536.

The Commission made a preliminary determination to terminate the investigation into the alleged dumping of aluminium overhead cable originating or imported from India. The Commission's preliminary findings were communicated in the Commission's Report No.61 and the notice to terminate the investigation was published in the Government Gazette No. 26422 Notice 1054 of 2004 dated 11 June 2004.

Interested parties were given an opportunity to respond to the preliminary report.

After considering the comments made by the Applicant to the preliminary report, the Commission made a final determination on 15 December 2004, to recommend that the investigation into the alleged dumping of aluminium overhead cable originating or imported from India be terminated.

1.6 INVESTIGATION PERIOD

Investigation periods:

Dumping: 01 July 2002 to 30 June 2003

Injury: 01 July 2000 to 30 June 2003

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of the following producers of the subject product:

- Malesela Taihan Electric Cable (Pty) Ltd
- Aberdare Cables

The information submitted by AECMSA (the Applicant), was verified prior to the initiation of the investigation.

1.7.2 Exporters/Foreign Manufacturers

The following exporters/manufacturers were identified as interested parties:

- (a) Apar Industries Limited
- (b) Sterlite Industries.

Apar Industries Ltd in India submitted a complete response to the exporter's questionnaire, which was subsequently verified from 01 to 03 March 2004.

Sterlite Industries responded to the Commission exporter questionnaire. The Commission rejected Sterlite Industries Ltd response, based on the following reasons:

- (a) Sterlite Industries Ltd did not submit to the Commission its domestic sales on a transaction basis as required by the Commission's exporter questionnaire.
- (b) The Commission also found that Sterlite Industries Ltd did not export the subject product to SACU during the period of investigation for dumping which is 01 July 2002 to 30 June 2003.

In its response to the preliminary report, the Applicant stated that the Commission should impose anti-dumping duties against Sterlite Industries Ltd on the basis of facts available. In support of this the Applicant referred the Commission to Article 6.8 of the Anti-Dumping Agreement, which provides for the determination of dumping on the basis of facts available.

The Commission reiterated its recommendation to terminate the investigation on the basis of Article 5.8 of the Anti-Dumping Agreement which, inter alia, provides as follows:

"An application shall be rejected and terminated promptly as soon as the authorities concerned are satisfied that there is no sufficient evidence of either dumping or injury to justify proceeding with the case".

Apar Industries Ltd, the only exporter of the subject product during the period of dumping investigation was found not to be dumping. There is no reason for the Commission to calculate a residual margin of dumping for India, as the subject product was exported to SACU on a previous tender awarded to Apar Industries Ltd and there are no other exporters who exported to SACU during the period of dumping investigation.

1.7.3 Importers

The following SACU importers were identified as interested parties:

- (a) Alstom
- (b) ABB SA (Pty) Ltd
- (c) Igunya Ltd
- (d) Nampower
- (d) Eskom

Alstom, Nampower and Eskom did not submit a response to the importer's questionnaire.

A complete response to the importer's questionnaire was submitted by Igunya Ltd and was subsequently verified on 23 February 2004.

ABB SA (Pty) Ltd did not remedy the deficiencies identified in their response to the importer's questionnaire and the Commission disregarded its response.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCT

2.1.1 Description

The subject product is described as:

Overhead Aluminium Conductor also known as Aluminium Cable Steel Reinforced or "ACSR"

2.1.2 Tariff classification

The subject product is currently classifiable as follows:

HS Code		Description		Unit	
76.14		Stranded Wire, Cables, Plaited Bands and the Like, of Aluminium, Not Electrically Insulated:			
	7614.10	With steel core		Kg	10%

2.1.3 Other applicable duties and rebates

The subject product is not subject to any anti-dumping duties.

2.1.4 Import Statistics

Article 5.8 of the Anti-Dumping Agreement provides as follows:

"There shall be immediate termination in cases where the authorities determine that the volume of dumped imports, actual or potential, is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member."

The import statistics indicated that the volume of not dumped imports from India account for 98% of the total imports of the like product during the dumping period of investigation.

2.1.5 Country of origin/export

The subject product is exported from India.

2.1.6 Application/end use

The imported subject product is used for the overhead transmission of electricity.

2.1.7 Production process

Aluminium ingots are processed through a furnace and converted into aluminium wire rod internally at Apar Industries Ltd. The aluminium wire rod is drawn into different sizes of wire. Steel rods and zinc sourced internationally is forwarded to local Indian processors for conversion into galvanized steel wires. The aluminium and galvanized steel wires are then stranded to manufacture the conductor.

2.2 SACU PRODUCT

2.2.1 Description

Overhead Aluminium Conductor, also known as Aluminium Cable Steel Reinforced or "ACSR".

2.2.2 Application/end use

The SACU product is used for the overhead transmission of electricity.

2.2.3 Tariff classification

The SACU product is currently classifiable under tariff subheading 7614.10.

2.2.4 Production process

Malesela sources the aluminium and steel rods from various sources. These rods are then drawn into various sizes of aluminium and steel wires which are finally stranded to manufacture the required cable.

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 products produced by the SACU industry are like products to those originating in or imported from India.

Article 2.6 of the Anti-Dumping Agreement provides as follows:

"Throughout this Agreement the term 'like product' ('product similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."

2.3.2 Analysis

In determining the likeness of products, the Commission uses the following criteria:

- Raw material used;
- Physical appearance and characteristics;
- Tariff classification;
- Method of manufacturing; and
- Customer demand and end use.

a. Raw material

Both the imported and the SACU product use the same raw materials, which are aluminium and steel.

b. Physical appearance and characteristics

The physical appearance and characteristics of both the imported and domestic products are as follows;

Aluminium and steel wire rods are drawn into different sizes of wire, galvanized with zinc and stranded together to make a conductor suitable for carrying an electric current.

The conductor is known as Overhead Aluminium Conductor, also referred to as Aluminium Cable Steel Reinforced or "ACSR".

c. Tariff classification

It is the same for both the imported and domestic products.

d. Method of manufacturing

The method of manufacturing of both the imported and domestic products is similar, which is mainly drawing and stranding.

Apar Industries Ltd, the exporter, starts the manufacturing process at an earlier stage by processing the aluminium ingots into aluminium rods. The SACU producer, however, buys the aluminium and wire rods and draws them into aluminium and steel wires, which are then stranded into a cable.

e. Customer demand / end use

Both the imported and domestic products are mainly used for the overhead transfer of electricity.

Taking the above into consideration, the Commission reiterated its preliminary determination that the SACU product and the imported products are "like products", for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

Article 5.4 of the Anti-Dumping Agreement, provides as follows:

"An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry."

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

Industry Standing (Tons)				
(Total SACU production of subject product for 12 months preceding the lodging of the application)				
Manufacturer	Supporting the application	Opposing the application	the	Neutral
Total Applicant's production	70 %			
Other manufacture as % of Total	30 %			
Total % of Support	100 %			

The Commission, made a final determination that the application was made "by or on behalf of the SACU industry" under the provisions of the Anti-Dumping Agreement.

4. DUMPING

4.1 DUMPING

Section 1 of the ITA Act, provides a definition of the term "dumping". The Act provides as follows:

"dumping" means the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of those goods"

4.2 NORMAL VALUE

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

(b)"normal value", in respect of any goods, means-

- (i) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or
- (ii) in the absence of information on a price contemplated in subparagraph (i), either-
 - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
 - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative;

4.3 EXPORT PRICE

Export prices are determined in accordance with section 32(2)(a) of the ITA Act, which provides as follows:

"export price" means the price actually paid or payable for goods sold for export net of all taxes, discounts and rebates actually granted and directly related to that sale ."

Section 32(6) of the ITA Act further provides as follows:

"if, in the investigation of dumping as contemplated in section 32(2)(a)-

- (a) it is found that there is no export price as contemplated in the definition of "dumping"; or
- (b) It appears that in respect of the export price there is an association or a compensatory arrangement between the exporter concerned and the importer or the third party concerned; or

- (c) it is found that for any other reason the export price actually paid or payable for the goods sold is unreliable;

"export price" in the said definition shall be constructed to mean the price constructed on the basis of the price at which the imported goods are first resold to an independent buyer, or if applicable, on any reasonable basis."

4.4 ADJUSTMENTS

Article 2.4 of the Anti-Dumping Agreement provides as follows:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

Both the Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. ITAC considers that for an adjustment to be allowed, quantifiable and verified evidence has to be submitted, and must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the Anti-Dumping Agreement and no anti-dumping duty will be imposed.

4.6 METHODOLOGY IN THIS INVESTIGATION

4.6.1 Normal Value

Type of economy

India is considered to be a country with a free market economy and therefore the definition of section 32(2) of the ITA Act applies.

4.6.1.1 Apar Industries Ltd, India

Like products to those exported to SACU were sold on the domestic market in India, in the ordinary course of trade. Export sales to Ghana (third country) sales were also used to determine the normal value for the comparable products not sold by Apar Industries Ltd on the domestic market in India, in accordance with section 32 (2) b (ii) of the ITA Act.

Third country sales (Ghana)

Export sales by Apar Industries Ltd to Ghana (third country sales) were used for normal value purposes in accordance with section 32 (2) (b) (ii) of the ITA Act. The two products exported by Apar Industries Ltd to Ghana, namely ACSR Magpie and ACSR Goat products, which were not sold in the domestic market in India, were chosen by Apar Industries Ltd on the basis that these products are comparable to those exported to SACU. The basis of comparability as outlined by Apar Industries Ltd is that these products exported to Ghana have similar specifications to those exported to SACU.

In its response to the preliminary report, the Applicant questioned the Commission's decision to use exports to a third country instead of constructing a cost build up for the purposes of determining normal value.

The Commission noted the comment by the Applicant, but found that 97 % of exports to SACU could be compared to normal value of products sold by Apar Industries Ltd in their domestic market. The remaining 3 % of exports to SACU had no comparable domestic sales and therefore the highest export prices to a third country namely Ghana were compared to exports to SACU for the purposes of determining normal value.

Adjustments to normal values

The following adjustments were claimed by the exporter and allowed by the Commission.

(a) Aluminium and steel metal content

The Aluminium and Steel metal content between the SACU exported product and the domestically sold products differs per product specification.

(b) Cost of credit

The exporter provides credit terms from the date of dispatch in the domestic market.

4.6.2 Export prices

Definition of export price

The definition of section 32(2)(a) of the ITA Act applies.

"export price", subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;

Apar Industries Ltd export sales invoices to SACU were used to calculate the export price.

Adjustments to the export prices.

The following adjustments were made to the export price for the purpose of calculating the ex-factory price.

(a) Freight and Insurance

The cost of sea freight and insurance was deducted from the invoiced export price.

(b) Agent Commission

The exporter has an agency agreement with an agent within SACU. The agent commission was deducted from the export price.

(c) Inland transport

The transport cost from the exporter's factory to the harbour in India was deducted from the export price.

(d) Duty Entitlement Pass Book

Some of the exports to SACU were exported under the Duty Entitlement Pass Book. The rebate was calculated and added to the export price. The Duty Entitlement Pass Book is basically a drawback scheme. Its effect is to neutralize the incidence of basic customs duty and surcharge on the import content of the export product.

(e) Cost of credit

The exporter provides credit terms from the date of dispatch to the importer. The cost of credit to the importer was deducted from the invoiced export price.

(f) Packaging

The exporter claimed packaging adjustment as the exports to SACU are packed in steel drums, which are returnable to India after the cable has been used.

In its response to the preliminary report, the Applicant alleged that the packing adjustment claimed by the exporter and allowed by the Commission should not be allowed as the drums are never returned to India and are left to decay on site.

The Commission noted the Applicants allegation on the packaging adjustment. The Commission nevertheless allowed this adjustment as it was substantiated by documentary evidence that such drums are returned to India.

4.6.3 Margin of dumping

Dumping margins were calculated for the individual comparable products by subtracting the adjusted weighted average ex-factory export price from the adjusted weighted average ex-factory domestic sale price. The difference was then divided by the export price.

The Commission found that no dumping was taking place.

4.6.3.1 Other manufactures and exporters in India

A residual duty was not calculated, as other manufactures of the subject product in India did not export to SACU during the period of dumping investigation.

4.6.4 Summary – dumping

Based on the information supplied, the Commission made a final determination that the subject product originating in or imported from India is not dumped into SACU.

5. SUMMARY OF FINDINGS

5.1 Dumping

The Commission made a final determination that no dumping of the subject product originating at or imported India is taking place.

5.2 Material injury and or threat of material injury

The Commission did not consider material injury and/or threat of material injury to the SACU industry as it was found that no dumping took place from India.

Accordingly the Commission made a final decision to terminate the investigation.

5.3 Causal link

The Commission found that the alleged material injury suffered by the Applicant or threat of material injury could not have been caused by dumped imports originating in or imported from India, as the imports from India were found not to be dumped into SACU.

6 RECOMMENDATION

In the light of its determination, the Commission made a final decision to recommend to the Minister that the investigation into the alleged dumping of aluminium overhead cable originating in or imported from India, be terminated.