

REPORT NO. 25

**WITHDRAWAL OF THE ANTI-DUMPING DUTY ON
ACRYLIC FABRIC ORIGINATING IN OR IMPORTED
FROM THE PEOPLE'S REPUBLIC OF CHINA AND
TURKEY: FINAL DETERMINATION**

The International Trade Administration Commission herewith presents its Report No. 25, WITHDRAWAL OF THE ANTI-CIRCUMVENTION DUTY ON ACRYLIC FABRIC ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND TURKEY: FINAL DETERMINATION, with recommendation.



(Ms N Maimela)

Chief Commissioner

Pretoria

30.09.2003

REPUBLIC OF SOUTH AFRICA
INTERNATIONAL TRADE ADMINISTRATION COMMISSION
REPORT NO. 25

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ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA
AND TURKEY: FINAL DETERMINATION**

NOTE

The International Trade Administration Commission (the Commission) was established on 1 June 2003 in terms of the International Trade Administration Act, 71 of 2002 (the ITA Act). As regards trade remedies matters it superseded the Board on Tariffs and Trade in all respects. For the sake of simplicity all references in this report are to the Commission. All references in this report to the Commission, and which relate to the period prior to 1 June 2003, should be understood to be a reference to the Board, and all references to the ITA Act that relate to the period prior to 1 June 2003 should be understood to be a reference to the Board on Tariffs and Trade Act, 107 of 1986.

SYNOPSIS

On 18 June 1999 an anti-dumping duty was imposed on acrylic blankets imported from *inter alia* China and Turkey. Following the imposition of the anti-dumping duties the SACU industry complained that blankets were imported in roll form and transformed into blankets through a cut, make and trim (CMT) operation. The Commission after investigation recommended that anti-circumvention duties be imposed on the acrylic fabric imported from China and Turkey. The Turkish Government challenged the Commission's determination in the WTO, indicating that the Anti-Dumping Agreement did not provide for anti-circumvention measures and that the Commission had not followed the correct procedures for an anti-dumping investigation. Following bilateral discussions with the Turkish Government both in Pretoria and in Ankara, and after finding that there were changed circumstances that enabled it to conduct a review, the Commission decided to recommend that the anti-circumvention duties be withdrawn.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the ITA Act and the World Trade Organisation's Agreement on the Implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement).

1.2 APPLICANT

The application was lodged by the Turkish Government on behalf of its exporters.

1.3 ALLEGATIONS BY THE APPLICANT

The Turkish Government indicated that the World Trade Organisation's Anti-Dumping Agreement does not provide for anti-circumvention action. It further indicated that the Commission did not follow the correct procedures in terms of the Anti-Dumping Agreement insofar as it did not notify the Turkish Government prior to the initiation of the review, did not provide Turkish exporters with a proper opportunity to respond and generally did not adhere to the requirements of Articles 6 and 12 of the Anti-Dumping Agreement. Accordingly, the Turkish Government requested the Commission to withdraw the anti-circumvention duty on acrylic fabric.

1.4 INVESTIGATION PROCESS

The Commission considered its procedures during the anti-circumvention review to determine whether the review was carried out in line with its obligations under the Anti-Dumping Agreement. It entered into consultations with the Turkish Government in Pretoria in June 2002 and in Ankara in June 2003. The procedures followed during the anti-circumvention review were discussed and the Commission's normal procedures were highlighted.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 PRODUCT

The product that is the subject of this application is acrylic fabric, normally used in the manufacture of acrylic blankets.

2.2 TARIFF CLASSIFICATION

The product is currently classifiable as follows:

Tariff subheading	Description	Current rate of duty (%)		
		General	EU	SADC
	ACRYLIC FABRICS Woven fabrics of synthetic staple fibres cont 85% or more by mass of synthetic fibres: - Contains 85% or more of acrylic or modacrylic staple fibres:			
55.15 5515.29	Other fabrics of synthetic staple fibres: Of acrylic or modacrylic staple fibres: Other			
	Other warp pile fabrics, epingle (uncut): containing 85% or more by mass of acrylic or modacrylic staple fibres	22 20	19 15	12 free
5801.35	Other warp pile fabrics, cut: containing 85% or more by mass of acrylic or modacrylic staple fibres	22 20	19 15	12 free
6001.10	Long pile fabrics containing 85% or more by mass of acrylic or modacrylic staple fibres	22	19	12
6001.22	Of man-made fibres (excluding looped pile fabrics) containing 85% or more by mass of acrylic or modacrylic staple fibres of a mass exceeding 250g/m ²	22	19	12
6001.92	Of man-made fibres (excluding looped pile fabrics) containing 85% or more by mass of acrylic or modacrylic staple fibres of a mass exceeding 250g/m ²	22	19	12

2.3 ANTI-CIRCUMVENTION DUTIES

The following anti-circumvention duties were imposed against acrylic fabric originating in or imported from China and Turkey on 8 February 2002:

The anti-circumvention duties were imposed as follows:

Tariff Subheading	Description	China	Turkey
5515.29	Other woven fabrics containing 85% or more by mass of acrylic or modacrylic staple fibres	634c/kg	650c/kg
5801.34	Other warp pile fabrics, epingle (uncut): containing 85% or more by mass of acrylic or modacrylic staple fibres	634c/kg	650c/kg
5801.35	Other warp pile fabrics, cut: containing 85% or more by mass of acrylic or modacrylic staple fibres	634c/kg	650c/kg
6001.10	Long pile fabrics containing 85% or more by mass of acrylic or modacrylic staple fibres	634c/kg	650c/kg
6001.22	Of man-made fibres (excluding looped pile fabrics) containing 85% or more by mass of acrylic or modacrylic staple fibres of a mass exceeding 250g/m ²	634c/kg	650c/kg
6001.92	Of man-made fibres (excluding looped pile fabrics) containing 85% or more by mass of acrylic or modacrylic staple fibres of a mass exceeding 250g/m ²	634c/kg	650c/kg

A rebate provision was created on the same day for clearing the product under rebate of the anti-dumping duty when used for a purpose other than the manufacture of blankets.

3. PROCEDURES

3.1 BACKGROUND

In May 2002 the Turkish Government requested the Commission to withdraw the anti-circumvention duties on acrylic fabrics. Consultations took place in Pretoria between the Commission and the Turkish Government in June 2002, but no mutually acceptable agreement could be reached. In April 2003 the Turkish Government filed an official complaint at the WTO in which formal consultations on the matter were requested.¹ The Commission agreed to the request and the consultations were held in Ankara in June 2003.

3.2 BASIS OF TURKISH GOVERNMENT REQUEST

Turkey submitted that—

- (a) the Commission had failed to ensure proper notifications in the anti-circumvention investigation;
- (b) the establishment of the facts was not proper; and
- (c) the Commission's evaluation of the facts was not unbiased and objective particularly in relation to:
 - (i) the initiation of the investigation into this case (the investigation);
 - (ii) the conduct of the investigation; and
 - (iii) the imposition of the anti-dumping duty.

Turkey submitted that the Commission's actions have resulted in the nullification or impairment of benefits directly or indirectly accruing to Turkey under the GATT 1994 and the Anti-Dumping Agreement as follows:

- (a) The following provisions of the Agreement on Implementation of Article VI of the GATT 1994:
 - (i) Article 5 (Initiation and Subsequent Investigation), specially Article 5.5;²
 - (ii) Article 6 (Evidence), specially Articles 6.1,³ 6.1.3,⁴ 6.2,⁵ 6.9⁶ and 6.10;⁷

¹ See Annexure 1.

² Article 5.5 of the Anti-Dumping Agreement provides as follows:

"The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned."

³ Article 6.1 of the Anti-Dumping Agreement reads as follows:

"6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply. Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

(iii) Article 9 (Imposition and Collection of Anti-Dumping Duties), specially Articles 9.2⁸ and 9.3,⁹ and

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.”

⁴ See footnote 3 for the wording of Article 6.1.3.

⁵ Article 6.2 of the Anti-Dumping Agreement reads as follows:

“Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.”

⁶ Article 6.9 of the Anti-Dumping Agreement reads as follows:

“The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.”

⁷ Article 6.10 of the Anti-Dumping Agreement reads as follows:

“The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.”

⁸ Article 9.2 of the Anti-Dumping Agreement reads as follows:

“When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.”

⁹ Article 9.3 of the Anti-Dumping Agreement reads as follows:

“The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made. Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by

- (iv) Article 12 (Public Notice and Explanation of Determinations), specially Article 12.1,¹⁰ alone and in conjunction with Article 6.1
- (b) The following provisions of the GATT 1994:
 - (i) Article III (National Treatment on Internal Taxation and Regulation); and
 - (ii) Article X (Publication and Administration of Trade Regulations).

3.3 PROCEDURES IN ANTI-CIRCUMVENTION INVESTIGATION

The Commission had received a complaint that the anti-dumping duties on acrylic blankets, which had been imposed against *inter alia* China and Turkey, were being circumvented by the importation of acrylic fabric in roll form, which was then transformed into blankets through a simple cut, make and trim (CMT) operation. The Commission initiated an anti-circumvention investigation on 15 December 2000. After investigating the facts before it, the Commission found that circumvention was taking place. It accordingly recommended to the Minister that anti-circumvention duties be imposed. After the Minister accepted the Commission's recommendation, the Commissioner for SARS imposed the duties indicated in paragraph 2.3 above.

The Commission did not follow normal investigation procedures insofar as it did not notify the Turkish Government before initiating the investigation. The Turkish exporters were also not provided with a copy of the application nor informed of the information required by the Commission. However, all parties were granted full opportunity to participate in the proceedings before the Commission.

3.4 CONSIDERATION IN THIS REVIEW

The Commission considered the allegations by the Turkish Government and found that some of the complaints were valid, e.g. that the Commission had not informed the Turkish

evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

- 9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided."

¹⁰ Article 12.1 of the Anti-Dumping Agreement reads as follows:

"When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a

Government of the application prior to initiating the investigation, that exporters were not informed of the information required by the Commission and that exporters were not supplied with a copy of the non-confidential application. Owing to these shortcomings the Commission decided to recommend to the Minister of Trade and Industry that the anti-circumvention duties be withdrawn.

4. RECOMMENDATION

In view of the fact that the correct procedures, as required by the Anti-Dumping Agreement, had not been followed in the original anti-circumvention investigation, the Commission decided to recommend that the anti-circumvention duties on acrylic fabric, classifiable under tariff subheadings 5515.29, 5801.34, 5801.35, 6001.10, 6001.22 and 6001.92, and originating in or imported from China and Turkey, be withdrawn.

**SOUTH AFRICA – DEFINITIVE ANTI-DUMPING MEASURES
ON BLANKETING FROM TURKEY**

Request for Consultations by Turkey

The following communication, dated 9 April 2003, from the Permanent Mission of Turkey to the Permanent Mission of South Africa and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Acting on instructions from my authorities I hereby request consultations with the Government of South Africa pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII of the General Agreement on Tariffs and Trade 1994 (the GATT 1994) and Article 17 of the Agreement on Implementation of Article VI of the GATT 1994 (the AD Agreement) with regard to the definitive anti-dumping measures imposed by South Africa on imports of blanketing in roll form from Turkey.

The measure at issue is the anti-dumping duty that resulted from the investigation initiated and concluded by the Board on Tariffs and Trade (BTT). The BTT initiated an investigation into the alleged circumvention of the anti-dumping duties on blankets originating in or imported from, inter alia, Turkey by the importation of blanketing in roll form on 15 December 2000. The investigation was concluded with the imposition of an anti-dumping duty of 650 c/kg on the said product originating in or exported from Turkey on 8 February 2002 with the Report No. 4132 and the Supplementary Report No. 4160 on 28 March 2002.

In view of the information available, Turkey considers that the BTT failed to ensure proper notifications in this case and that the establishment of the facts was not proper and that its evaluation of these facts was not unbiased and objective particularly in relation to:

- (i) the initiation of the investigation into this case (the investigation),
- (ii) the conduct of the investigation,
- (iii) the imposition of the anti-dumping duty.

More specifically, Turkey considers that infringements of the following provisions have resulted in the nullification or impairment of benefits directly or indirectly accruing to Turkey under the GATT 1994 and the AD Agreement:

- (i) The following provisions of the Agreement on Implementation of Article VI of the GATT 1994:
 - (a) Article 5 (Initiation and Subsequent Investigation), specially Article 5.5,
 - (b) Article 6 (Evidence), specially Articles 6.1, 6.1.3, 6.2, 6.9 and 6.10,
 - (c) Article 9 (Imposition and Collection of Anti-Dumping Duties), specially Articles 9.2 and 9.3,
 - (d) Article 12 (Public Notice and Explanation of Determinations), specially Article 12.1, alone and in conjunction with Article 6.1.

(ii) The following provisions of the GATT 1994:

(a) Article III (National Treatment on Internal Taxation and Regulation),

(b) Article X (Publication and Administration of Trade Regulations).

The Government of Turkey reserves its rights to raise further factual claims and legal matters during the course of consultations. We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations in this regard.