ITAC

International Trade Administration Commission of South Africa

Report No. 33

Sunset Review: Termination of the anti-dumping duties on capsules containing 250 mg amoxicillin trihydrate, originating in India and imported from Ranbaxy Laboratories Limited, India

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The International Trade Administration Commission presents its Report No. 33: SUNSET REVIEW: TERMINATION OF THE ANTI-DUMPING DUTIES ON CAPSULES CONTAINING 250 MG AND 500 MG AMOXYCILLIN TRIHYDRATE, ORIGINATING IN INDIA AND IMPORTED FROM RANBAXY LABORATORIES LIMITED, INDIA

PRETORIA

29 / 09 / 2003

Ms N P Maimela
Chief Commissioner: ITAC

SUNSET REVIEW: TERMINATION OF THE ANTI-DUMPING DUTIES ON CAPSULES CONTAINING 250 MG AND 500 MG AMOXYCILLIN TRIHYDRATE, ORIGINATING IN INDIA AND IMPORTED FROM RANBAXY LABORATORIES LIMITED, INDIA

1 Background

On 26 September 1997 final anti-dumping duties were imposed on the importation, under tariff subheading 3004.10, of capsules containing 250 mg and 500 mg ampicillin trihydrate and 250 mg and 500 mg amoxycillin trihydrate originating in India and imported from Ranbaxy Laboratories Ltd, India (the exporter). The Board found that the Pharmacare Ltd (the petitioner) had suffered material injury and that the subject products were dumped on the SACU market, causing material injury to the SACU industry as a result. In accordance with the provisions of the Anti-Dumping Agreement any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. Accordingly, the Board published a notice in the *Government Gazette* on 6 July 2001 inviting responses from interested parties to show if and why the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury. The petitioner, however, did not submit information in respect of the 250 mg and 500 mg capsules containing ampicillin trihydrate and the Tender Board has also not awarded any tenders for these products (ampicillin trihydrate) over the last three years.

On 28 August 2002 the Board decided that there was not sufficient reason to proceed with a sunset review with regard to 250 mg and 500 mg capsules containing ampicillin trihydrate and recommended that the duties should therefore be terminated and only to proceed on capsules containing amoxycillin trihydrate.

2. Discussion

The present review of the anti-dumping duties on 250 mg and 500 mg capsules containing amoxycillin trihydrate (subject products) was primarily concerned with the petitioner's share of the State tender market in South Africa. Paragraph F5.5.1 of the non-confidential version of the petitioner's review questionnaire response stated "...Ranbaxy ...again be ...awarded the entire tender. In such a case Pharmacare's market share will decrease from 99% to 0%.". The issues on the continuation or recurrence of material injury were, therefore, based largely on arguments about being awarded or losing any possible future awards by the State Tender Board to Ranbaxy

Laboratories Ltd. The State Tender Board advised the results of the Comed Tender on 19 August 2003 which showed that it had not awarded the tender for the capsules containing 250 mg and 500 mg amoxycillin to Pharmacare Ltd or Ranbaxy Laboratories Ltd for the period 1 August 2003 to 31 July 2005, but to third party companies.

As the sunset review was specifically concerned with a tender awarded to Ranbaxy, it therefore stands to reason that this situation is no longer possible and the Commission then considered Article 5.8 of the WTO Anti-Dumping Agreement. Article 5.8 of the WTO Anti-Dumping Agreement provides as follows, amongst other:

> "An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case.". (Own emphasis)

The Commission also noted the practice and procedures applied by the European Union in this regard and noted the comment in the following extract "... In this regard, the Commission must determine whether a recurrence of injury to the Community industry caused by dumping would be foreseeable and imminent in the absence of measures.". (See Van Bael & Bellis, Anti-Dumping and Other Trade Protection Laws in the EEC (3rd ed.) paragraph 738, page 311.)

On 25 August 2003 the Commission considered the issue of whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and material injury and found that the petitioner cannot suffer material injury as a result of dumping by the exporter, in respect of the tender market, as the tender for the next two years was awarded to parties other than the petitioner and exporter.

3. Recommendation

The Commission accordingly recommends that the anti-dumping duties on capsules containing 250 mg and 500 mg amoxycillin trihydrate, classifiable under tariff subheading 3004.10, be terminated.