

REPORT NO. 633

CREATION OF A FULL DUTY REBATE FACILITY ON TITANIUM DIOXIDE CLASSIFIABLE UNDER TARIFF SUBHEADING 3206.11 FOR USE IN THE MANUFACTURE OF PAINTS, VARNISHES AND PREPARED DRIERS CLASSIFIABLE IN TARIFF HEADINGS 32.08, 32.09, 32.10 AND 32.11, VALID FOR A LIMITED PERIOD OF 30 MONTHS FROM DATE OF IMPLEMENTATION

The International Trade Administration Commission of South Africa herewith presents its Report No. 633: **Creation of a full duty rebate facility on titanium dioxide classifiable under tariff subheading 3206.11 for use in the manufacture of paints, varnishes and prepared driers classifiable in tariff headings 32.08, 32.09, 32.10 and 32.11, valid for a limited period of 30 months from date of implementation**



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PRETORIA

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REPUBLIC OF SOUTH AFRICA

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 633

Creation of a full duty rebate facility on titanium dioxide classifiable under tariff subheading 3206.11 for use in the manufacture of paints, varnishes and prepared driers classifiable in tariff headings 32.08, 32.09, 32.10 and 32.11, valid for a limited period of 30 months from date of implementation.

Synopsis

The Commission considered an application by Kansai Plascon (Pty) Ltd (the "Applicant" or "Kansai Plascon"), for the creation of a rebate facility on titanium dioxide classifiable under tariff subheading 3206.11 for use in the manufacture of paints, varnishes and prepared driers classifiable in tariff headings 32.08, 32.09, 32.10 and 32.11.

During its deliberations and in arriving at its recommendation, the Commission considered the information at its disposal, including comments received during the investigation period.

The Commission found that:

- According to current information at the Commission's disposal, there is no local manufacturer of titanium dioxide in the Southern African Customs Union (SACU). However, Nyanza Light Metals ("Nyanza"), a local company, has undertaken to produce titanium dioxide domestically, although its project is still in progress, with Phase one of the project, which is the construction of the Product Testing and Development Centre, having just been completed. Nyanza expects to start construction of the main plant in Quarter 2 of 2023 and is aiming for commercial production to commence in Quarter 1 of 2025.

- Updated information at the Commission's disposal shows that whilst Nyanza has completed Phase 1 of its project, the projected date for commencement of production has changed to Quarter 1 of 2025 when compared to the date provided at the time of the Commission's initial consideration, which was 2024.
- The Applicant's profitability on sales of paint has been under strain over the past four years. In this regard, the Applicant has experienced an average net loss on sales of paint from 2016 to 2019. The Commission also noted that the Applicant's ex-factory selling prices have fluctuated over the period of investigation.
- It is envisaged that should the rebate facility concerned be created it will be made subject to an ITAC permit with specific Guidelines, Rules and Conditions as this will enable the Commission to monitor the use of the rebate item concerned for the 30-month period before the Nyanza plant will be operational.

On balance and in light of the above considerations, the Commission decided to recommend that a rebate facility be created for a limited period of 30 months to enable the domestic paint manufacturing industry to eliminate unnecessary cost rising pressures and increase production of paint.

Additionally, by making the rebate subject to an ITAC permit with specific Guidelines, Rules and Conditions, the Commission will be in a position to monitor the use of the rebate item concerned for the 30-month period before the Nyanza plant becomes operational.

In light of the foregoing, the Commission recommended the creation of a rebate facility on titanium dioxide classifiable under tariff subheading 3206.11, for use in the manufacture of paints, varnishes and prepared driers, classifiable under tariff headings 32.08, 32.09, 32.10 and 32.11, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, provided the product is not available in the SACU market.

The Commission further recommended limiting the validity period of the rebate facility to 30 months from the date of implementation. The reason for the limitation is to avoid uncertainty that a rebate provision subject to a review might have on the Nyanza project which may, amongst others, assist Nyanza with accessing funding and/or attracting investment, while

taking into consideration Nyanza's confirmation that it is aiming to commence production in Quarter 1 of 2025.

1. APPLICATION AND TARIFF POSITION

- 1.1. Kansai Plascon (Pty) Ltd (the "Applicant" or "Kansai Plascon") applied for the creation of a rebate facility on titanium dioxide classifiable under tariff subheading 3206.11 for use in the manufacture of paints, varnishes and prepared driers classifiable in tariff headings 32.08, 32.09, 32.10 and 32.11.
- 1.2. The Applicant is the South African subsidiary of a Japanese multinational company, Kansai, that acquired Plascon in 2011 as the company sought to expand its global footprint. Kansai currently operates in 192 countries and prides itself in the technical field with several Research and Development facilities ("R&D") around the world including South Africa.
- 1.3 The Applicant manufactures a variety of paint and coating products at five independent plants situated in Krugersdorp, Midrand, Durban, Port Elizabeth and Cape Town. The company is well known for its paint brand, Plascon with its origins dating back to 1889.
- 1.4 As reasons for the application, Kansai Plascon stated, *inter alia*, that:
 - *Titanium dioxide is a vital raw material in the manufacturing of coatings or paint products in the SACU. In addition, titanium dioxide serves as a vital raw material across many other manufacturing industries, including inter alia adhesives, paper, plastics and rubber, printing inks, coated fabrics and textiles, ceramics, floor coverings, roofing materials, cosmetics, toothpaste, soap, water treatment agents, pharmaceuticals, food colorants, automotive products, sunscreen and catalysts.*
 - *Paint manufacturers are one of the biggest users of titanium dioxide in the SACU market as it is used as the base of most paint colours. Nonetheless, there is currently no SACU manufacturer of titanium dioxide. The last local manufacturer, Hunstman closed down its manufacturing facility in 2016. The current 10 per cent customs duty*

currently serves to unnecessarily increase the cost of importing titanium dioxide and consequently the cost and prices of manufactured end products, including paint.

- Local coating manufacturers are also facing significant import competition of paint originating in other countries. The duty on titanium dioxide thus creates a cost and price disadvantage for locally manufactured paint.
- There is a potential local manufacturer of titanium dioxide, Nyanza Light Metals, and support for this effort is acknowledged. The creation of a rebate facility will be an equitable solution for all parties whilst Nyanza Light Metals continues with its work for construction of a titanium dioxide plant.

1.5 The application was published in the Government Gazette on 30 January 2020, for interested parties to comment.

1.6 The current tariff structure for titanium dioxide is shown in Table 1 below.

Table 1: Current tariff position for the subject products (Titanium dioxide)

Tariff heading	Tariff subheading	Description	Statistical unit	Rate of Duty					
				General	EU/UK	EFTA	SADC	MERCOSUR	A/CFTA
32.06		Other colouring matter; preparations as specified in Note 3 to this Chapter (excluding those of 32.03, 32.04 or 32.05); inorganic products of a kind used as luminophores, whether or not chemically defined:							
	3206.1	Pigments and preparations based on titanium dioxide:							
	3206.11	Containing 80 per cent or more by mass of titanium dioxide calculated on dry matter	kg	10%	Free	Free	Free	10%	Free

(Source: SARS)

1.7 Table 1 above illustrates that titanium dioxide classifiable under tariff subheading 3206.11 attracts a 10 per cent *ad valorem* duty from countries under the General and MERCOSUR economic regions.

1.8 Table 2 below shows the final products manufactured by the Applicant. The final products are classifiable under tariff headings 32.08, 32.09, 32.10 and 32.11,

respectively. Overall, the majority of the final paint and varnish products imported from the General and MERCOSUR economic regions attract a 10 per cent *ad valorem* duty, whilst two tariff subheadings (3208.90.30 and 3211.00) are free of duty across all regions.

Table 2: Tariff structure of final manufactured products

Tariff heading	Tariff subheading	Description	Statistical unit	Rate of Duty					
				General	EU/UK	EFTA	SADC	MERCOSUR	AfCFTA
32.08		Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium, solutions as defined in Note 4 to this chapter:							
	3208.10	- Based on polyesters	Kg	10%	Free	Free	Free	10%	8%
	3208.2	Based on Acrylic or vinyl polymers:							
	3208.20.10	- in aerosol containers	Kg	10%	Free	Free	Free	10%	8%
	3208.20.20	- Solutions as defined in Note 4 to this Chapter, of acrylic polymers	Kg	15%	Free	Free	Free	15%	8%
	3208.20.90	- Other	Kg	10%	Free	Free	Free	10%	8%
	3208.9	Other							
	3208.90.30	- Solutions as defined in Note 4 to this Chapter of silicones	Kg	Free	Free	Free	Free	Free	Free
	3208.90.90	-Other	Kg	10%	Free	Free	Free	10%	8%
32.09		Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium							
	3209.1	Based on acrylic or vinyl polymers							
	3209.10.10	- in aerosol containers	Kg	10%	Free	Free	Free	10%	8%
	3209.10.90	Other	Kg	10%	Free	Free	Free	10%	8%
	3209.9	Other							
	3209.90.10	- in aerosol containers	Kg	10%	10%	10%	10%	10%	8%
	3209.90.90	- Other	Kg	10%	10%	10%	10%	10%	8%
32.10	3210.00	Other Paints and vanishes							

	3210.00.10	- In aerosol containers	Kg	10%	Free	Free	Free	7.5%	8%
	3210.00.10	- Other	Kg	10%	Free	Free	Free	7.5%	8%
	3211.00	Prepared Driers	Kg	Free	Free	Free	Free	Free	Free

(Source: SARS)

1.9 Table 3 below shows the Applicant's request for the creation of a rebate facility, for a rebate of the full customs duty on titanium dioxide, with the following rebate description as provided by the South African Revenue Service ("SARS"):

Table 3: Requested rebate structure

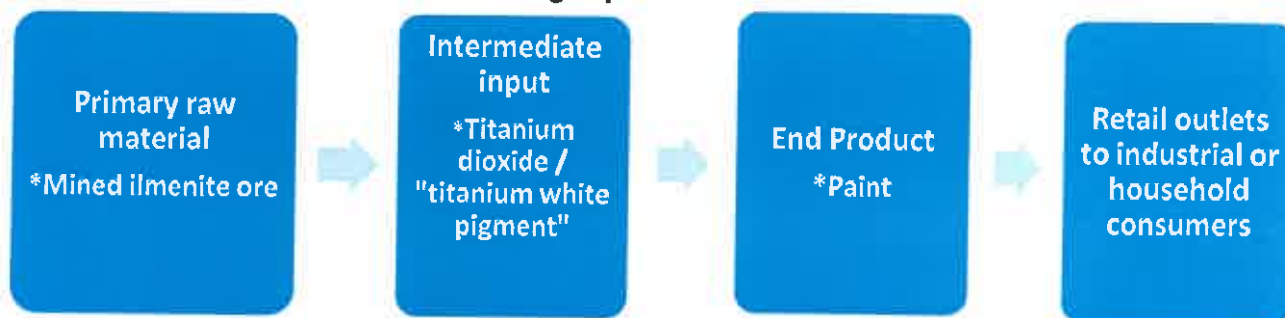
Rebate Item	Tariff sub heading	Description	Extent of Rebate
xxx.xx	3206.11	Pigments and preparations containing 80 per cent by mass of titanium dioxide calculated on dry matter, classifiable in tariff subheading 3206.11, for use in the manufacture of paints, varnishes and prepared driers, classifiable in tariff headings 32.08, 32.09, 32.10 and 32.11	Full duty

(Source: SARS)

2. DISCUSSION

- 2.1. The subject product is titanium dioxide used as a key intermediate input in the manufacture of, *inter alia*, paints, plastics and paper products. In particular, titanium dioxide is used as a pigment in paints commonly known as "titanium white pigment". This is one of the most common pigments in global use and is the basis for most paint colours. Its high refractive index means that, as a pigment, it is able to scatter visible light. This results in an opaque colour and creates a bright, reflective quality when applied to a surface or incorporated into a product.
- 2.2. According to information at the Commission's disposal, the principal natural source of titanium dioxide is mined ilmenite ore, which contains 40 – 60 per cent of titanium dioxide. Ilmenite ore and compound titanium dioxide are found around the world, in several kinds of rock and mineral sands including a component of some beach sands. From the enriched derivative known as titanium slag, pure titanium dioxide can be produced using either the sulphate or chloride production process.
- 2.3. Figure 1 below shows the position of the subject product in the value chain of manufacturing of paint products:

Figure 1: Value chain for the manufacturing of paint



(Source: Adapted from applicant)

- 2.4. According to information at the Commission's disposal, there is currently no local manufacturer of titanium dioxide in the SACU. The last local manufacturer, Huntsman Pigment and Additives (Pty) Ltd ("Huntsman") closed down its manufacturing plant situated in Umbongintwini at the end of 2016.
- 2.5. Further information at the Commission's disposal indicates that Nyanza, in a Media Release dated December 2020, highlighted that the project will be rolled-out in two phases, the first phase being for the construction of a technical service centre, which will house the semi-production plant with an investment value of R200 million and the second being the main production plant with a combined investment value of approximately R4.5 billion. At peak production, Nyanza expected the main production plant to produce over 80 000 tons per annum of titanium dioxide pigment as well as other Nano-titanium related products from titanium slags.
- 2.6. During the period June - August 2022, the Commission considered the amendment of the proposed rebate facility for titanium dioxide with particular consideration being given to limit the validity period of the rebate facility concerned to 2 years (24 months).

- 2.7. In terms of ITAC's legislative framework and the Promotion of Administrative Justice Act's (PAJA) requirements, ITAC provided notice to interested stakeholders of the Commission's intention to consider the creation of a rebate facility for titanium dioxide for a limited period of 24 months. The Notice was published in the Government Gazette No. 46581, Notice 1098 of 2022 on 22 June 2022 for a period of two (2) weeks, for interested stakeholders to submit comment.
- 2.8. During the publication period of 2022, Nyanza indicated that in terms of its progress on the project, the project is on track. According to Nyanza, construction of the Product Testing and Development Centre, which is Phase 1 of the project, has been completed. Nyanza expects to start construction on the main plant in Quarter 2 of 2023 and is aiming for production to commence in Quarter 1 of 2025.
- 2.9. The Applicant submitted that should the application be supported by the Commission; it expects to increase its production as well as maintain its employment level for the 2020 to 2022 period.
- 2.10. Comments during the first publication period, which were in support of the application were received from, *inter alia*, Nyanza Light Metals, the South African Paint Manufacturers Association ("SAPMA"), Tronox (Pty) Ltd ("Tronox"), Cathay Industries Africa (Pty) Ltd ("Cathay") and SAPY (Pty) Ltd ("SAPY").
- 2.11. Although Ferro and Protea Chemicals opposed the application, its contention was based on a practical basis that the application for the creation of a rebate facility should be extended to all users of titanium dioxide and importers.
- 2.12. Comments were received in response to the publication pertaining to considering limiting the proposed rebate facility for titanium dioxide for the manufacture of paints, varnishes and prepared driers, *inter alia*, from Akzonobel (Pty) Ltd and Specialized Coatings (Pty) Ltd. Overall, interested stakeholders acknowledged the importance of the Nyanza project, however, highlighted issues relating to, *inter alia*, sufficient commercial quantities being available to meet total SACU demand, pricing and concerns regarding the titanium dioxide product performance.

3. FINDINGS

3.1. The Commission found that:

- According to current information at the Commission's disposal, there is no local manufacturer of titanium dioxide in the Southern African Customs Union (SACU). However, Nyanza Light Metals ("Nyanza"), a local company, has undertaken to produce titanium dioxide domestically, although its project is still in progress, with Phase one of the project, which is the construction of the Product Testing and Development Centre, having just been completed. Nyanza expects to start construction of the main plant in Quarter 2 of 2023 and is aiming for commercial production to commence in Quarter 1 of 2025.
- Updated information at the Commission's disposal shows that whilst Nyanza has completed Phase 1 of its project, the projected date for commencement of production has changed to Quarter 1 of 2025 when compared to the date provided at the time of the Commission's initial consideration, which was 2024.
- The Applicant's profitability on sales of paint has been under strain over the past four years. In this regard, the Applicant has experienced an average net loss on sales of paint from 2016 to 2019. The Commission also noted that the Applicant's ex-factory selling prices have fluctuated over the period of investigation.
- It is envisaged that should the rebate facility concerned be created it will be made subject to an ITAC permit with specific Guidelines, Rules and Conditions as this will enable the Commission to monitor the use of the rebate item concerned for the 30-month period before the Nyanza plant will be operational.

3.2. On balance and in light of the above considerations, the Commission decided to recommend that a rebate facility be created for a limited period of 30 months to enable the domestic paint manufacturing industry to eliminate unnecessary cost rising pressures and increase production of paint.

3.3. Additionally, by making the rebate subject to an ITAC permit with specific Guidelines, Rules and Conditions, the Commission will be in a position to monitor the use of the rebate item concerned for the 30-month period before the Nyanza plant becomes operational.

4. RECOMMENDATION

- 4.1. In light of the foregoing, the Commission recommended the creation of a rebate facility on titanium dioxide classifiable under tariff subheading 3206.11, for use in the manufacture of paints, varnishes and prepared driers, classifiable under tariff headings 32.08, 32.09, 32.10 and 32.11, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, provided the product is not available in the SACU market.**
- 4.2. The Commission further recommended limiting the validity period of the rebate facility to 30 months from the date of implementation. The reason for the limitation is to avoid uncertainty that a rebate provision subject to a review might have on the Nyanza project which may, amongst others, assist Nyanza with accessing funding and/or attracting investment, while taking into consideration Nyanza's confirmation that it is aiming to commence production in Quarter 1 of 2025.**