

**REPORT NO. 461**

**SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON WELDED LINK CHAIN  
RANGING IN SIZE FROM 4MM TO 10MM ORIGINATING IN OR IMPORTED  
FROM THE PEOPLE'S REPUBLIC OF CHINA: FINAL DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its Report No.461: **SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON WELDED LINK CHAIN RANGING IN SIZE FROM 4MM TO 10MM ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA: FINAL DETERMINATION**



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CHIEF COMMISSIONER

PRETORIA

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## 1. APPLICATION AND PROCEDURE

- 1.1 This investigation is conducted in accordance with the International Trade Administration Act, 2002, (ITA Act 71 of 2001), and the International Trade Administration Commission's Anti-Dumping Regulations (ADR).
- 1.2 On 29 June 2012, the Commission notified interested parties through *Government Gazette* Notice No. 35463 that unless a substantiated request is made indicating that the expiry of the anti-dumping duty on welded link chain originating in or imported from the People's Republic of China would likely lead to the continuation and/or recurrence of dumping and material injury, the anti-dumping duty on the subject products would expire on 08 May 2013.
- 1.3 A sunset review application questionnaire was received from Scaw Metals Chain Products on 08 November 2012. After all the deficiencies were addressed, an updated review questionnaire was received on 03 April 2013.
- 1.4 The applicant is Scaw Metals Chain Products, the producer of the subject product in the SACU.
- 1.5 The investigation was initiated through notice number 421 of 2013 published in the *Government Gazette* No. 36392 on 26 April 2013. All known interested parties were notified of the initiation of the investigation and initiation letters were sent to interested parties on 29 April 2013.
- 1.6 The applicant claimed that it could not obtain the domestic selling prices in the People's Republic of China (PRC), and nominated Australia as the surrogate country in Terms of the Record of Understanding between the Commission (ITAC) and the Bureau of Fair Trade for imports and exports (BOFT) of the Ministry of Commerce of the PRC.
- 1.7 The investigation period for dumping was from 01 January 2012 to 31 August 2012, and information with regard to the material injury involved evaluation of data from material injury for the period 01 January 2008 to 31 December 2011 and the eight months period 01 January 2010 – 31 August 2010 to 01 January 2012 –

August 2012, with an estimate should the anti-dumping duties expire.

- 1.8** A late deficient response was received from PWB Anchor, the nominated Australian manufacturer of the subject product (Australia a surrogate country), and the information was not verifiable. The Commission therefore, made a final determination not to consider the information submitted by PWB Anchor for the purposes of its determination.
- 1.9** A complete response was received from Rudong Chain Works, an exporter of the subject product from the PRC.
- 1.10** No response was received from the importers.
- 1.11** Essential facts letters were sent to interested parties and comments were received from Scaw Metals and Rudong Chain Works.
- 1.12** The Commission took into account all comments received in making the final determination.
- 1.13** All public submissions made by interested parties are contained in the Commission's public file for this investigation.
- 1.14** It should be noted that this report does not purport to present all comments received and considered by the Commission. However, some salient and pivotal comments received from interested parties and the Commission's considerations of these comments are specifically included in this report.

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

### 2.1 IMPORTED PRODUCTS

#### 2.1.1 Description

The subject product is described as non-articulated welded link chain of a diameter of 4mm or more but not exceeding 10mm, commonly known as Welded link chain.

#### 2.1.2 Tariff classification

The subject product is classifiable as follows:

Tariff subheading	Description	Unit of measure	Rate of Customs duty	Rebate item	Rebate provision description if any
7315.82	Other welded link chain	Kg	Free	N/A	N/A

The following anti-dumping duties are applicable to the subject product, originating in or imported from the PRC:

Tariff heading	Description	Country	Current Anti-Dumping Duty
7315.82	Welded link chain manufactured and exported by Rudong Chain Works	PRC	2.4%
7315.82	Welded link chain manufactured and exported by all other manufacturers excluding Rudong Chain Works	PRC	52.9%

## **2.2 SACU PRODUCT**

### **2.2.1 Description**

The subject product is described as non-articulated welded link chain of a diameter of 4mm or more but not exceeding 10mm, commonly known as Welded link chain.

### **3. INDUSTRY STANDING**

#### **3.1 INDUSRTY STANDING**

The applicant's production volume represents more than 50 percent of the total SACU production.

The Commission made a final determination that the application can be regarded as being made by or on behalf of the domestic industry.

## **4. DUMPING**

### **METHODOLOGY IN THIS INVESTIGATION**

#### **4.1. Dumping**

The Record of understanding between ITAC and the Bureau of Fair Trade for Imports and Exports (BOFT) of the Ministry of Commerce of the PRC, provides that the PRC will be treated as a market economy for purposes of anti-dumping investigations. A distinction, however, must be made between the treatment for purposes of initiation and the subsequent phases of the investigation. Where domestic selling price information in the PRC is not available, SACU industries are allowed to use alternative methods permitted by the WTO in determination of a normal value for the PRC.

##### **4.1.1 Normal value - Rudong Chain Works**

A response to the Commission's exporter questionnaire was received from Rudong Chain Works, the manufacturer/exporter of the subject product in the PRC and the information was verified.

In determining whether Rudong Chain Works operates in the ordinary course of trade, information was considered with regard to competition, marketing, advertising, input cost of main raw materials and whether it is supplied at arm's length, ownership of the companies, and human resource policies.

The exporter divided all its sales models according to the respective coating/finishing for both domestic and export sales.

Domestic sales were all done in the exporter's currency, Chinese Yuan Renminbi (¥) and respective volumes were in tons. The normal value was based on the actual verified sales of the subject product in the exporter's domestic market.

The exporter sold 9 models in its domestic market. Of the 9 models, 6 were exported to the SACU market. Over 20 percent of sales of some of the models in the domestic market of the exporter were sold below cost.



The Commission made a final determination that sales made below cost in quantities equaling at least 20 percent by volume of total domestic sales during the investigation period be considered as not being made in the ordinary course of trade. The Commission made a final determination to exclude such sales from the normal value determination for the respective model/models and determined the normal value using the remainder of the sales. For other models, domestic sales are used for determination of normal value.

**(a) Domestic sales adjustments**

The exporter claimed the following adjustments which were verified:

**(i) Payment terms**

The exporter claimed adjustments for payment terms for sales made in the domestic market. Payment terms were not offered on all domestic sales.

**(ii) Transport costs/Delivery charges**

The exporter delivered all the goods sold to customers in its domestic market. The delivery terms were stated on the invoices.

**(iii) Packaging costs**

The exporter claimed adjustment for packaging. The cost for all models both domestic and export sales were the same.

The Commission made a final determination to allow the adjustment of normal value for payment terms and transport cost/delivery charges. The Commission made a final determination not to allow the adjustment of normal value for the packaging cost.

**4.1.2 Export price**

The Commission made a final determination to use export price based on actual verified export sales to the SACU market. Export sales to the SACU market are invoiced in US Dollar and converted into RMB on the date of invoice. The export transactions were shown to be either on FOB, CNF, CFR

or CIF basis, and these terms were clearly stipulated by the customer on the purchase order and on the invoices.

**(a) Export price adjustments**

The exporter claimed the following adjustments which were verified:

**(i) Transport costs/Delivery charges**

The exporter delivered the goods according to the delivery terms stipulated on the purchase orders and those contained in the relevant transport documents of the individual export transactions. The delivery terms were either on FOB, CNF, CFR or CIF basis. The goods exported to SACU are transported by sea transport and inland transport. The costs for the sea transport are in US\$ and those for inland costs were found to be in Chinese ¥.

**(ii) Port Charges**

Port charges were incurred for export transactions.

**(iii) Marine insurance**

Insurance costs were incurred for only those goods exported on a CIF basis.

**(iv) Payment terms**

The exporter claimed adjustments for payment terms for some of the sales made to the SACU market.

**(v) Packaging costs**

The exporter claimed adjustment for packaging. The cost for all models both domestic and export sales were the same.

The Commission made a final determination to allow the adjustment of normal value for payment terms, transport cost/delivery charges, port charges and marine insurance. The Commission made a final determination not to allow the adjustment of normal value for the packaging cost.

#### **4.1.3 Margin of dumping**

The margin of dumping was calculated to be minus 0.021 percent when expressed as a percentage of the export price.

#### **4.2.1 Normal Value for all other manufactures/exporters in the PRC**

For the residual dumping margin, the Commission used the normal value based on the best available information, the verified weighted average normal value obtained from Rudong Chain Works.

##### **(a) Adjustment to normal value**

The Commission made a final determination to allow the adjustment of normal value for transport cost.

#### **4.2.2 Export price**

The applicant indicated that SARS statistics contain other products that are not the subject of the investigation. The Commission therefore decided that Rudong's export price was the best available information.

The Commission made a final determination to use the best available information, that is, the verified weighted export price obtained from Rudong Chain Works, the manufacturer of the subject product in the PRC.

##### **Adjustment to export price**

The Commission made a final determination to allow the adjustment of normal value for transport cost and port charges.

#### **4.2.3 Margin of dumping**

The margin of dumping for all other exporters was calculated to be minus 0.022 percent when expressed as a percentage of the export price.

#### **4.2.3.1 Comments by Rudong Chain Works (RCW)**

- **Normal value and export price**

*RCW stated that the best available information adopted by the Commission in the current sunset review was not consistent with the method adopted by the Commission in the original investigation. In the original investigation the Commission used the actual verified sales information submitted by PWB Anchor in Australia to calculate the normal value.*

*The Commission should use the export price to SACU obtained from SARS official import statistics since this was used in the original investigation.*

#### **Commission's consideration**

*In terms of the Anti-Dumping Regulations, the Commission may consider the information that is available to the Commission at the time of making a determination, whether preliminary or final, and which has been verified or is verifiable, provided that all requirements regarding non-confidentiality and timely submission have been met. The information submitted by PWB Anchor was deficient and, could not be verified and/or was not verifiable. In this case the Commission used the verified normal value as the best information available being RCW information.*

*For the export price, two sources of information were considered, SARS statistics and the RWC export price to SACU. The Commission considered that the best available information is the verified information from RCW. The SARS import statistics was not the best available information since the applicant indicated that the relevant tariff sub-heading consists of other products that are not part of the investigation. In the calculation of the residual dumping margin, some adjustments allowed for RCW's individual dumping calculation were not allowed for the residual dumping margin calculation.*

#### **4.2.3.2 Comments by the applicant**

- ***Incorrect legal standard and relevance of dumping margins in sunset review***

*The applicant alleges an incorrect legal standard was used in reaching the conclusion that there is no likelihood of recurrence of dumping as it was based on a negative dumping margin for the responding PRC exporter. It requested the Commission to base its determination on PWB Anchor's information for residual dumping margin calculation should the dumping margin be considered relevant and to consider other factors.*

#### **Commission's consideration**

- *Legal standard.*

*The legal standard for conducting a sunset review investigation would come from the domestic legislation and the WTO agreement. Both mandate that the duties should expire unless:*

- 1) a review is initiated before the expiry of five years from the date of the imposition of the duty;*
- 2) a determination is made whether the expiry of the duty would likely lead to continuation or recurrence of dumping; and*
- 3) a determination is made whether the expiry of the duty would likely lead to a continuation or recurrence of injury.*

- *There is, however, no prescribed methodology for a determination of likelihood of continuation or recurrence of dumping and material injury.*
- *The Panel in US — Corrosion-Resistant Steel Sunset Review observed that Article 11.3 is silent as to how an authority should or must establish that dumping is likely to continue or recur in a sunset review.*

*That provision itself prescribes no parameters as to any methodological requirements that must be fulfilled by a Member's investigating authority in making such a 'likelihood' determination.*

- *Guidance drawn from the Appellate Body ruling in US — Corrosion-Resistant Steel Sunset Review, is that, should investigating authorities choose to rely upon dumping margins in making their likelihood determination, the calculation of these margins must conform to the disciplines of Article 2 in general and in particular Article 2.4.*
  - *South Africa chose a methodology that relies on dumping margins to make likelihood determinations. Nowhere did the applicant point out what was wrong in the determination of the dumping margins at issue, other than that RCW's information should not be used for calculation of residual dumping margin for reason of inconsistency. The applicant did not suggest that the calculated dumping margin was not in conformity with Article 2 of the Agreement.*
- *With regard to the use of PWB Anchor as basis for the calculation of the dumping margin, the following is submitted:*
  - *The Panel in US — Corrosion-Resistant Steel Sunset Review found that an investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence.”*
  - *The information of RCW was verified, and the information from PWB could not be verified and was not verifiable. For that reason, it is the Commissions' view that it could not provide a factual basis for it to base its dumping determination on. The Commission therefore based its determination on the best information available, i.e. the verified information from RCW.*
- *The applicant also argued against reliance on a single dumping margin and supported its argument with extracts from Algorax vs ITAC, 2007 High Court judgment and WTO appellate body report. The extracts are however out of context.*

*In reference to the Algorax VS ITAC case cited by the applicant, the judgment in that case is revealing: "In the end the likelihood of a recurrence of dumping in the SACU is the issue that has to be determined. The determination of that issue will involve technical expertise of which the court is not possessed. The result is therefore that the review will succeed and that the matter will be remitted to the Commission.....It is for the Commission to decide on the procedure it will follow." (Algorax v ITAC, 200 JDR 0529; pg 6).*

*Regarding the WTO appellate case, the case referenced was against the United States, whose practice in sunset reviews is completely different from SA's in that the determination of the likelihood of dumping is based on past determinations.*

#### **Comments by the applicant**

- **Anti-dumping duties in third countries**

*The fact attesting to the likelihood of recurrence of dumping of the product under consideration is the number of anti-dumping investigations imposed against the same product under consideration originating from China, as in the present sunset review investigation. The applicant further referred the Commission to the judgment in the Algorax v. ITAC case where the judge noted that the fact that there was an established pattern of dumping in other countries may be a strong indication of 'deliberate dumping as part of a marketing strategy'.*

#### **Commission's consideration**

*There is no evidence that imposition of anti-dumping duties in third countries would lead to exports to those countries ceasing completely. There is also no evidence that since anti-dumping duties were imposed in other countries exports from the PRC have all been diverted to SACU. Neither the import statistics, nor the estimates of imports given by the applicant, point to the likelihood of imports from the said countries coming to SACU. Furthermore, the assumption by the applicant seems to ignore the fact that there are exporters found not to be dumping from the PRC in the current and original investigations.*

On the Algorax vs ITAC case, while the judge may have noted the “deliberate dumping as part of a marketing strategy”, the Commission noted the following about the ruling in that case; “It is for the Commission to decide on the procedure it will follow.” (Algorax v ITAC, 2007 JDR 0529; pg 6). The ruling did not direct the Commission what to consider to reach a determination of likelihood of recurrence of dumping.

#### **Comments by the applicant**

- **Trade barriers by other countries**

The Commission should also be mindful of the fact that other countries impose a number of other trade barriers on the subject product from China. The European Union and the United States imposed a number of technical specifications and compliance procedures that drive Chinese welded link chain to the lower end of the market where prices are much less attractive for Chinese products.

#### **Commission’s consideration**

There is also no evidence that since anti-dumping duties were imposed in other countries, exports from the PRC have all been diverted to SACU. The technical specification and compliance procedures fall within the purview of the National Regulator for Compulsory Specifications.

#### **Comments by the applicant**

- **Production capacity and inventories**

Applicant submitted that the fact that RCW has a production capacity of about 40 000 tons a year is indicative that it is likely to dump.

#### **Commission’s consideration**

The assertion by the applicant about RCW’s production capacity is misleading as it is presented as if RCW only produces welded link chain of 4mm – 10mm (product under investigation). RCW produces a variety of chains such as weldless chains; stainless steel chains; snow chains, animal chains; chain attachments, etc.



**Comments by the applicant**

- **Protection and subsidy**

*RCW biggest input cost, steel low carbon wired rod is heavily subsidised. RCW is protected from foreign competition by an import duty on the subject product and VAT (Value added tax) and other domestic tax and costs.*

**Commission's consideration**

*The protection provided to RCW can be regarded as a subsidy which can only be dealt with in a countervailing investigation. Since the foreign producer's landed cost is lower than the SACU industry's ex-factory selling price of the subject product, it is considered that the exporter does not have an incentive in this circumstance to reduce its prices with the intention to undercut the applicant.*

**Comments by the applicant**

- **Export price to third countries**

*The applicant requested the Commission to consider export prices of RCW to third countries and that in the event that the export prices to third countries are lower than the prices of the product when exported to the SACU, the usual conclusion is that there is a likelihood of recurrence of dumping. According to the applicant, this is the practice in other jurisdictions.*

**Commission's consideration**

*Comparison of the export price to third countries with the export price to SACU would have been considered for RCW had RCW not exported to SACU. Since RCW exported to SACU, actual sales in its domestic market were used, as is the practice, mandated by domestic law in line with the Anti-dumping agreement.*

**Comments by the applicant**

*Despite a weaker Rand in 2013, Chinese exporters maintain import volumes and Rand prices, thus decreasing the monthly per-unit export value in US Dollars.*

**Commission's consideration**

*The Commission considered the argument about exchange rate fluctuations as*

*being subjective and considered to have been made because they favour the applicant in this situation.*

**Comments by the applicant**

- **Reliability of the source of information**

*The applicant points to discrepancies between the import statistics and verified exports as being misinterpretation or incorrect declaration by Rudong Chain works (RCW). The applicant also stresses that on two occasions RCW represented itself to the Commission as a small company when it is not, according to the information on RCW's website. On this basis, the applicant submitted that these circumstances render RCW's information unreliable and unsuitable for the disposition of this investigation.*

*On this basis the applicant proposed that the country and company proposed as a surrogate third country is an appropriate benchmark for the calculation of the normal value.*

**Commission's consideration**

*The Commission used the information of RCW because it was the best available information that was verified. Other information considered was information submitted by PWB Anchor and import statistics from SARS. Given that PWB information could not be verified, and the fact that the applicant indicated that SARS statistics consists of other products not part of the investigation, RCW's information was the best available.*

**4.3 Conclusion**

After considering all the above information and all comments received from interested parties; that the imports from RCW account for over 60 percent; that there is another exporter from the PRC who was found not to be dumping in the original investigation; and that the calculated dumping margin is negative, the Commission made a final determination that the expiry of the anti-dumping duties on welded link chain ranging in size from 4mm to 10mm originating in or imported from the People's Republic of China would not likely lead to the recurrence of dumping.

## 5. MATERIAL INJURY

### 5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to the information submitted by Scaw Metals Chain Products.

The Commission made a final determination that the applicant's production constitutes "a major proportion" of the total production, in accordance with the Anti-Dumping Regulations.

### 5.2 IMPORT VOLUMES AND EFFECT ON PRICES

#### 5.2.1 Import volumes

The following tables show the volume of the allegedly dumped imports of the subject product during the injury period of the investigation:

**Table 5.2.1: Import volumes**

Country	2008	2009	2010	2011	Estimates if duty expires
Alleged imports (PRC): (Tonnes)	1 051.57	648.54	961.21	1 266.49	1 304.49
Other imports (tonne):	447.44	287.88	328.51	393.41	405.41
Total imports (tonnes):	1 499.01	936.42	1 289.72	1 659.90	1 709.90
Alleged dumped imports as % of total imports	70.15%	69.26%	74.53%	76.30%	76.30%

**Table 5.2.2: Effects on prices**

	2008	2009	2010	2011	Estimate if duty expires
Price depression: Applicant's selling price (R/Kg):	100	116.57	130.56	144.64	80.23
Price undercutting as % of the Applicant's selling price:	100	48.04	62.93	62.02	21.64
Cost as % of the selling price:	100	81.36	72.88	67.80	140.00

\*This table was indexed due to confidentiality using 2008 as the base years

**Table 5.2.3: Economic factors**

<b>Material injury indicators</b>	2008	2009	2010	2011	Estimate if the duty expires
Applicant's Sales Volumes in the SACU (tonne)	100	74.47	61.78	67.66	58.06
Gross profit margin (Rands):	100	112.14	113.27	144.46	19.82
Output (tonne):	100	75.79	73.47	76.47	52.92
Market share – SACU sales volume (tonne):	100	74.52	61.69	67.62	58.05
Market share of other imports	100	64.43	73.60	87.92	90.60
Market share of alleged dumped imports:	100	61.60	91.35	120.44	124.05
Productivity per employee:	100	78.35	77.29	70.94	54.56
Return on total net assets:	100	48.41	13.26	44.38	28.82

Capacity utilization (%)	100	82.73	79.14	83.42	81.83
Inventories (tonne)	100	87.24	77.24	74.58	57.15
Employment (Production)	100	105.60	102.40	117.60	100
Net cash flow (Company)	100	103.19	20.87	-15.02	10.65
Wages: production (Rands)	100	96.42	106.88	125.45	125.45
Margin of dumping expressed as % of ex-factory export price					
Rudong Chain Works		-0.021%			
All other exporters		-0.022%			

\*This table was indexed due to confidentiality using 2008 as the base year

### 5.3 Conclusion

The commission made a final determination that the expiry of the anti-dumping duties on welded link chain ranging in size from 4mm to 10mm originating in or imported from the People's Republic of China would likely lead to the recurrence of material injury to the SACU industry.

## **6. SUMMARY OF FINDINGS**

### **6.1 Continuation or Recurrence of Dumping**

The Commission made a final determination that the expiry of the anti-dumping duties on welded link chain ranging in size from 4mm to 10mm originating in or imported from the People's Republic of China would not likely lead to the recurrence of dumping to the SACU industry.

### **6.2 Continuation or Recurrence of Material Injury**

The Commission made a final determination that the expiry of the anti-dumping duties on welded link chain ranging in size from 4mm to 10mm originating in or imported from the People's Republic of China would likely lead to the recurrence of material injury to the SACU industry.

For the anti-dumping duties to be in place, there must be a finding of the likelihood of continuation and/or recurrence of both dumping and material injury. In this case, the finding is that the expiry of the anti-dumping duties would not likely lead to the continuation and/or recurrence of dumping. Therefore there is no basis for maintaining the anti-dumping duties.

## **7. RECOMMENDATION**

The Commission made a final determination that the expiry of the anti-dumping duties on welded link chain ranging in size from 4mm to 10mm originating in or imported from the People's Republic of China would not likely lead to the recurrence of dumping.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on welded link chain ranging in size from 4mm to 10mm originating in or imported from the People's Republic of China (PRC) be terminated.