REPORT NO. 321

INVESTIGATION INTO THE ALLEGED CIRCUMVENTION OF ANTI-DUMPING DUTIES ON IMPORTS OF TALL OIL FATTY ACID ORIGINATING IN OR IMPORTED FROM SWEDEN, THROUGH IMPORTING FROM THE UNITED STATES OF AMERICA: FINAL DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its **Report No.321 : INVESTIGATION INTO THE ALLEGED CIRCUMVENTION THE OF ANTI-DUMPING DUTIES ON IMPORTS OF TALL OIL FATTY ACID ORIGINATING IN OR IMPORTED FROM SWEDEN, THROUGH IMPORTING FROM THE UNITED STATES OF AMERICA: FINAL DETERMINATION**

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CHIEF COMMISSIONER

PRETORIA
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1 APPLICATION AND PROCEDURE

1.1 APPLICANT

The application was lodged by ITS Trade, on behalf of Industrial Oleochemical Products (Pty) Ltd, being the sole manufacturer of the product under investigation in the SACU.

1.2 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that subsequent to the imposition of the provisional duties on imports of tall oil fatty acid imported from Sweden, certain importers, including Hobart Trading, who was identified as the importer in the original investigation, have shifted the sourcing of the subject product from Arizona Chemical in Sweden to its related company in the USA. Hence the allegation of country hopping.

1.3 DATE OF ACCEPTANCE OF APPLICATION

The Commission accepted the application as being properly documented on 10 March 2009.

1.4 INVESTIGATION PROCESS

On 29 April 2009, the USA Government was notified of the receipt of a properly documented application, in terms of Article 5.5 of the Anti-Dumping Agreement. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential version of the application.

The Commission initiated an investigation into the alleged circumvention of anti-dumping duties on imports of tall oil fatty acid originating in or imported from Sweden, through importing from the USA, pursuant to Notice No. 625 of 2009, published in *Government*

Gazette No. 32253 on 29 May 2009.

The Commission considered all information submitted by interested parties and found that, although circumvention of anti-dumping duties, in the form of country hopping was taking place, the tall oil fatty acid originating in or imported from the USA was not being imported at "dumped" prices. The Commission therefore considered making a final determination to terminate the investigation. A letter of "essential facts" containing the Commission's intended decision was sent to all interested parties, inviting them to submit comments.

After considering all the information and comments on the "essential facts" letter, the Commission made a final determination that, although circumvention in the form of country hopping was taking place, there was no dumping of the subject product originating in or imported from the USA.

1.5 INVESTIGATION PERIOD

The investigation period for dumping is from 1 June 2008 to 28 February 2009.

1.6 PARTIES CONCERNED

1.6.1 SACU industry

The SACU industry consists of only one producer, being Industrial Oleochemical Products (Pty) Ltd.

1.6.2 Exporter/Foreign Manufacturer

Only one exporter of the subject product, Arizona Chemical USA was identified and responded fully to the Commission's exporter questionnaire.

1.6.3 Importers

The following SACU importers responded to the Commission's importers questionnaires:

(a) Hobart Trading

(b) Rolfes Colour Pigments International

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The imported product is described as tall oil fatty acid. It is sold under the name Sylfat 2.

2.1.2 Tariff classification, other applicable duties and rebates

Table 2.1.2: Tariff classification

Tariff subheading	Description		Rates of duty			
			General	EU	EFTA	SADC
3823.13	**Tall oil fatty acids**	**Kg**	**10%**	**3.8%**	**7.5%**	**Free**

2.1.3 Import Statistics

The import statistics indicated that the volume of the alleged dumped imports from the USA accounted for 81 per cent of the total imports of the subject product during the period of investigation for dumping.

2.1.4 Country of origin/export

The subject product originates in or is imported from the USA.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as tall oil fatty acid. It is sold under the name BR4-4.

2.2.2 Tariff classification

The SACU product is classified under tariff sub-heading 3823.13.

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 product produced by the SACU industry is a "like product" to that originating in or imported from the USA.

Table 2.3.1 like product determination

	Imported product	**SACU product**
Raw materials	Crude tall oil	Crude tall oil
Physical characteristics and appearance	Combination of light colour, very good colour stability and air drying properties	Combination of light colour, very good colour stability and air drying properties
Tariff classification	3823.13	3823.13
Production process	Distillation and fractionation	Distillation and fractionation
Application or end use	Manufacture of alkyd resins	Manufacture of alkyd resins
Substitutability	The SACU product and the imported product are fully substitutable with no process changes.	The SACU product and the imported product are fully substitutable with no process changes.
Any other factors proven to the satisfaction of the Commission to be relevant	None	None

After considering all the above factors, the Commission decided that the SACU and the imported products are "like products", for purposes of comparison, in terms of Article 2.6 of the Anti-Dumping Agreement, and Section 1 of the Commission's Anti-Dumping Regulations.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

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

Table 3.1: Industry standing

Industry Standing	(Total domestic production of like goods for the 12 months preceding the lodging of the petition)			
Manufacturer	**Production volume- Support application**	**Percentage supporting application**	**Production volume opposing application**	**Production volume- neutral**
Industrial Oleochemical Products	-	**100%**	-	-
Total SACU	-	**100%**	-	-

Based on the above, the Commission decided that the application can be regarded as being made by or on behalf of the domestic industry.

4. COUNTRY HOPPING

The import statistics obtained from the South African Revenue Service showed that during December 2008 and January 2009, there were no imports from Sweden, whereas imports from the USA amounted to 81 per cent of total imports. The Commission found that this information indicated a commencement of a switch in suppliers, and decided on this evidence, that circumvention in the form of country hopping was taking place.

Comments by Xikhovha Advisory (Xikhovha)

Xikhovha stated that they agreed with the Commission's findings that there is no dumping and the termination of the investigation, but did not agree with the finding that circumvention, in the form of country hopping was taking place. Xikhovha substantiated its disagreement of circumvention by referring to the exporter's verification report which did not mention any findings on circumvention.

Comments by ITS Trade (ITS)

ITS stated that Xikhovha's argument is based on the allegation that there was not an "increase in imports from the USA" and therefore argued that there is "clear evidence that circumvention was not taking place". ITS stated that they wish to highlight that the import volume from the USA for the period of investigation (POI), being June 2008 to February 2009, was 1 742 115 kilograms. ITS stated that what Xikhovha neglected to disclose with regard to the period January 2008 to May 2008 was that Foskor imported approximately 4 000 000kg of a different product that is used in a different market segment and these imports were not repeated during the POI. ITS stated that if this product is taken out of the equation the imports from the USA in January 2008 to May 2008 were 919 704kg while the imports during the POI increased by 89.4% to 1 742 115kg. It is thus clear that imports did increase.

The Commission's consideration

The Commission's consideration of circumvention was based on the switch of imports to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and which is based in another country. Information verified at the exporter indicated that there were exports to SACU during the period of investigation.

Based on the above, the Commission decided that circumvention in the form of country hopping is taking place.

5. DUMPING

5.1 METHODOLOGY USED IN THIS INVESTIGATION

The information submitted by the exporter, Arizona Chemicals and the two importers, Hobart Trading and Rolfes Colour Pigments International, was considered by the Commission.

5.1.1 Normal Value

Calculation of normal value

The exporter sold the subject product in its domestic market during the period of investigation. Based on this information, a domestic selling price was determined.

Adjustments to normal value

The Commission allowed the following adjustments to the normal value:

- rebates incurred by the exporter to two of its biggest domestic customers upon achieving certain targeted levels of purchases;
- freight incurred by the exporter for delivery of its domestically sold products;
- packaging for products sold by the exporter in its domestic market; and
- payment terms on the exporter's domestic market.

Comments by ITS

ITS stated that it is important to note the wording "at the time of setting prices" of section 11 of the ADR. Therefore, the adjustment for rebates can only be made if during the price negotiation, the rebate value or percentage was negotiated, fixed and set in a formal agreement. ITS

stated that bearing in mind that the POI is only 9 months, it is strange that the rebates were given during the period of investigation and it is more likely that they qualified for the rebates but did not receive it. Therefore the adjustment cannot be allowed by the Commission.

The Commission's consideration

The Commission found that upon verification the exporter granted rebates to two of its biggest domestic customers upon achieving a set target of purchases. Both the volume and value of such rebates were verified.

Export sales

The exporter exported the subject product, Sylfat 2 to SACU during the period of investigation. Based on this information, an export price for the products exported to SACU was determined.

Adjustments to export price

The Commission allowed the following adjustments to the export price:

- packaging and freight to exports to SACU; and
- payment terms to SACU.

Comments by ITS

ITS requested the Commission to ensure that the comparison with regard to the export price is done at the correct level. ITS stated that the export price would be the price paid by Hobart Trading to Arizona Chemicals (USA) and not the invoiced price of Hobart Trading to the customer in South Africa being Carst and Walker.

Comments by Xikhovha

Xikhovha stated that the export price is the price paid by Hobart Trading. Carst and Walker does not purchase tall oil fatty acid from

Hobart Trading.

The Commission's consideration

During the verification conducted at both importers it was found that the goods are declared at SARS using Arizona Chemical's invoices to Hobart Trading. The export price determined was based on the price paid by Hobart Trading to Arizona Chemicals.

5.1.2 Margin of Dumping

A margin of dumping was determined to be -17 per cent when expressed as a percentage of the ex-factory export price. In other words, the product was not imported at "dumped" prices.

Comments by ITS

ITS pointed out that the imports from the USA are continuing to be imported at extremely low prices. ITS stated that they therefore request the Commission to impose a residual anti-dumping duty on the USA based on the dumping margin as calculated by the Applicant to ensure that the non-cooperating parties are not benefiting.

Comments by Xikhovha

Xikhovha stated that when the USA anti-circumvention matter was initiated, it was initiated on the basis of allegation of country hopping, and this allegation was therefore brought exclusively against Arizona Chemical, as they are the only exporter from the USA who was affected by the previous antidumping case against Sweden. Xikhovha stated that if there was a general concern of anti-dumping out of the USA, then the applicant should have initiated a full anti-dumping review and not simply requested a country hopping investigation. Xikhovha stated that the documents submitted to ITAC to initiate the country hopping investigation are completely inadequate to initiate a

full anti-dumping review, so it would be impossible to impose a residual duty.

Xikhovha stated that importantly though, this comment from ITS Trade clearly proves their point that there is not country hopping out of the USA and that the basis for this initiation was flawed.

The Commission's consideration

ADR 60.8 states, inter alia, that "country hopping shall be deemed to take place if imports, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory". Since the only supplier in the USA related to the supplier in the original investigation was found not to be dumping, a residual duty cannot be imposed, as it will affect the suppliers in the USA that are not related to the supplier in the original investigation.

Based on the above, the Commission decided that dumping of the subject product originating in or imported from the USA is not taking place.

6. MATERIAL INJURY

MATERIAL INJURY

In the original investigation it was determined that the SACU industry suffered material injury.

The Commission's Anti-dumping Regulations 62.2 states as follows: "*provided an anti- circumvention complaint is lodged with the Commission prior or within one year of the publication of the Commission's final determination, the SACU industry shall not be required to update its injury information*".

Based on the above, the Commission decided that the Applicant does not have to submit new material injury information.

7. DETERMINATION

The Commission decided that:

1. Circumvention of the anti-dumping duties in the form of country hopping is taking place; and

2. Dumping of tall oil fatty acid originating in or imported from the USA is not taking place.

Based on the above, the Commission decided to recommend to the Minister of Trade and Industry that the investigation be terminated.