International Trade Administration Commission of South Africa

Report No. 103

Sunset review of the anti-dumping duties on acrylic blankets originating in or imported from the People's Republic China and Turkey: Final determination

enabling FAIR TRADE

The International Trade Administration Commission presents its Report No. 103: SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON ACRYLIC BLANKETS ORIGINATING IN OR IMPORTED FROM THE PEOPLES REPUBLIC OF CHINA (China) AND TURKEY : Final determination

PRETORIA
24/ 03 / 2005

Ms Nomonde Maimela
Chief Commissioner

SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON ACRYLIC BLANKETS ORIGINATING IN OR IMPORTED FROM THE PEOPLES REPUBLIC OF CHINA (China) AND TURKEY : Final determination

SYNOPSIS

In accordance with the provisions of Article 11.3 of the WTO 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 likely lead to the continuation or recurrence of dumping and injury.

Texfed, representing the acrylic blanket producers in SACU, responded in the matter and provided prima facie evidence to warrant the initiation of the sunset review. Exporters from China and Turkey were invited to respond in the matter, but failed to do so. The Commission then made a provisional finding that was based on the best information available, which was provided by Texfed.

As is the usual procedure, interested parties were then again given an opportunity to provide relevant comments on the Commission's provisional finding and the only response received in this regard was from the Turkish Government. The Commission considered the comments but decided that it did not detract from its findings that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury.

In the final determination the Commission reaffirmed its findings of the provisional determination that the present duty structure in place with regard to Turkey remain in place as the dumping margins found were more-or-less similar to that found during the initial investigation five years ago. With regard to China, the Commission found the dumping margin to be higher than that found initially (5 years ago) and decided to recommend that the applicable anti-dumping duty be increased accordingly.

The Commission consequently recommended to the Minister of Trade and Industry that the definitive anti-dumping duties in respect of imports of acrylic blankets, classifiable under tariff subheadings 6301.40 and 6301.90, originating in or imported from Turkey be maintained, and that those in respect of China, be increased to the extent and in a specific duty format, that is detailed in the table below:

Imports originating from	Dumping margins found	Equivalent specific anti-dumping duties recommended
China	246,3%	2834 cents/kilogram
Turkey	33,26%	388 and 691 cents per kilogram

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the ADA or the Anti-Dumping Agreement) and the International Trade Administration Commission Anti-Dumping Regulations (ADR), issued in terms of section 59 of the ITA Act.

It must be noted that ADR 56.1 prescribes that sunset reviews are single phase investigations and ADR 59 provides that the Commission's recommendation may result in the withdrawal, amendment or reconfirmation of the original anti-dumping duty. It follows, therefore, that no preliminary determination is made and that no provisional payments are imposed, although the present duty structure may remain in place pending the finalisation of the investigation. ADR 43, however, provides that all interested parties will be advised of the essential facts to be considered by the Commission in its final determination, and be allowed to comment thereon, before a final determination and recommendation to the Minister of Trade and Industry is made.

1.1.1 Comments by the Turkish Government on procedural issues

The Turkish Government stated that the WTO Anti-Dumping Agreement prescribes that preliminary determinations should be disclosed through public notices, which also applies to reviews. It then also states that the anti-dumping duty should have been regarded as a provisional payment and the public notice should have advised of this fact. The Turkish Government again responded to the Commission's second essential fact letter dated 4 February 2005 and challenged the Commission on what it refers to as arbitrary methodologies in respect of both dumping and injury. They state, amongst other, that sunset reviews are similar to a threat of material injury and accordingly should be treated in a similar way.

1.1.2 Comments by the Commission

Sunset reviews are undertaken in terms of the ITAC Anti-Dumping Regulations that specify that sunset reviews are single-phase investigations (see ADR 56.1) and that interested parties are advised of any provisional findings by way of essential fact letters, which was also the case in respect of this matter, which states, amongst other, that the Commission does not make any final determination until all interested parties were afforded the opportunity to respond to the provisional finding. The crux of Turkey's claims with regard to previous and the present essential fact letters are that the Commission *(i) either did not establish facts properly, or (ii) did not evaluate them objectively on an unbiased manner, or (iii) did not base its findings on*

a sufficient factual basis. The following is a summary of the arguments and basis of evaluation used by the Commission in its findings in respect of this matter:

- In the case of dumping, the Commission's normal procedure is to rely on the best information (facts) available in cases where the exporters do not cooperate in investigations, thereby withholding information. In the case of Turkey, the applicant provided the normal value and export price that it obtained from a Turkish acrylic blanket producer at a textile exhibition in Europe. In the case of China, the applicant used Turkey as a surrogate for normal value purposes. The Commission considered the information and its source and found it to be satisfactory. A copy of the applicant's non-confidential version of its application was made available to the exporters in China and Turkey, but they declined to respond in the matter. The Commission considered that the Chinese and Turkish exporters had in fact withheld information from the Commission by declining to cooperate, as is envisaged by Article 6.8 of the Anti-Dumping Agreement. It must also be noted for the record that the very same information was also provided to the Chinese and Turkish Governments, which also did not respond initially. The motivations for determining the likely levels of dumped imports are contained elsewhere in this Report, under the heading of Material Injury.

  With regard to procedural issues, the Commission noted that, although WTO jurisprudence does not require it to do calculate dumping margins, it none-the-less used this methodology to be objective and fair in its evaluation of the matter under consideration.

  The Appellate Body ruled in the *Corrosion Resistant Carbon Steel Flat Products from Japan matter* [WT/DS244/AB/R 15 December 2003 – paragraphs 123 & 124] that Article 11.3 (of the ADA) neither explicitly requires authorities in a sunset review to calculate fresh dumping margins, nor explicitly prohibits them from relying on dumping margins calculated in the past. This silence in the text of Article 11.3 suggests that no obligation is imposed on investigating authorities to calculate or rely on dumping margins in a sunset review. Then paragraph 124 – We consider that it is consistent with the different nature and purpose of original investigations, on the one hand, and sunset reviews on the other hand, to interpret the Anti-Dumping Agreement as requiring investigating authorities to calculate dumping margins in an original investigation, but not in a sunset review. *In this case Japan challenged the fact that the USDOC had based its dumping determination on dumping margins found in previous administrative reviews.*

- In the case of material injury and the issue of the *likelihood* of injury if the duty is revoked, the Commission normally requires three years historical information that is based on the material injury factors in Article 3 of the ADA. In addition, the Commission requires applicants to show what the *likely* (or probable) situation would be if the duty is revoked, also in respect of each of the material injury factors. In the present case the applicant provided the historical information and the likely situation-scenarios and advised that the basis of its argument is

that imports of the subject products would increase to a level equal to that found in the years immediately prior to the imposition of the initial anti-dumping duties 5 years ago. The applicant in effect foresees that it will lose sales (both volume and value) to the likely cited imports. The declining *"likely"* sales and other "likely" figures is therefore, based on a cumulatively considered *likely* import volume of in the order of 3500 tons, more-or-less that encountered (cumulatively) during 1997 and 1998, which diminished to a level of 306 tons in 1999 and 91 tons in 2000, as a result of (after) the imposition of the definitive anti-dumping duties initially. The effect of the diminished levels of imports (1999 onwards) were, therefore, considered to be directly consequential to the imposition of the anti-dumping duties initially and a reversal of this situation would in all *likelihood* be realized, if the anti-dumping duties were revoked. Both China and Turkey have a history of dumping, as is evidenced in the initial investigation, and it follows that a removal of any punitive dumping measures would in all probability have the effect of a resumption of dumping from the cited countries, if considered in this context. The SACU industry used this as the basis of its arguments for the *likelihood* assumptions on probable imports from China and Turkey and the likely effect on its trading activities if the anti-dumping duties are revoked. This was objectively considered by the Commission and found to have a sufficient factual basis to conclude that the adverse impact on the domestic industry was *likely* as a result of a *likely* increase in the volume of dumped imports and the consequential *likely* negative price and volume effects.

- A further issue raised by the Turkish Government was that sunset reviews should be handled in a manner similar to that of threat-to-material-injury investigations, which is provided for in paragraph 3.7 of the WTO Anti-Dumping Agreement. The Commission rejected the Turkish Government's statements in this regard noting that it is not a requirement of the WTO Anti-Dumping Agreement, according to WTO jurisprudence (see below):

  According to a recent WTO Appellate Body finding in respect of the *Oil Country Tubular Goods from Argentina* matter [WT/DS268/AB/R 29 November 2004 – paragraph 365(d)(i)] it ruled that the obligations set out in Article 3 (material injury factors to be considered) do not apply to the likelihood-of-injury determinations. *In this matter Argentina had challenged that that the United States had acted inconsistently with the provisions of Article 3 of the ADA.* The Commission, however, still considered the material injury factors over a comparative period, for purposes of an objective evaluation, notwithstanding the requirements of the ADA.

1.2 APPLICANT

The applicant in this matter is Texfed, who represents the manufacturers of the subject product in the SACU.

1.3 INVESTIGATION PROCESS

A detailed response to the review questionnaire was received from the Texfed on 23 March 2004. The application had deficiencies and the deficiencies were addressed on 30 April 2004.

Interested parties were given the opportunity to respond or to provide comments on the Commission's provisional findings, the extent and nature of which are contained in this report. The Commission made a final determination on 9 March 2005 and found that a likelihood of a recurrence of dumping and material injury exists if the anti-dumping duties are revoked. The Commission's recommendations to the Minister of Trade and Industry are contained in the last part of this report.

1.4 INVESTIGATION PERIOD

This submission contains information with regard to dumping for the period 1 January 2003 to 31 December 2003, and information with regard to injury for the period 1 January 2000 to 31 December 2003, as well as an estimated figures for 2004, should the duty expire.

1.5 PARTIES CONCERNED

1.5.1 SACU industry

The manufacturers of the subject product in the SACU are:
Aranda Textile Mills (Pty) Ltd;
Ahlesa Blankets (Pty) Ltd;
Wilford Investments CC;
Sesli Textiles (Pty) Ltd;
Whinstone Enterprises; and

1.5.2 Exporters/Foreign Manufacturers

Sesli Tekstil in Turkey provided a response in respect of acrylic fabric. It was then pointed out that this investigation related to acrylic blankets and they were requested to provide details of its domestic and export sales in respect of the subject products. No further response was, however, received from Sesli.

1.5.3 Importers

No importers responded in the matter

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject products are described as acrylic blankets.

2.1.2 Country of origin/export

The subject products are exported from PRC and Turkey.

2.1.3 Application/end use

The imported subject products are for the same end use as the domestic product.

2.1.4 Tariff classification

The subject products are currently classifiable as follows:

Table 2.1.4

Tariff subheading	Description	Duty	
		General	EU
6301.40	Blankets (excl electric blankets) and traveling rugs of synthetic fibres	30%	30%
6301.90	Blankets (excl electric blankets) and traveling rugs of synthetic fibres, other	30%	30%

No rebate provisions are available

2.1.5 Other applicable duties

The subject products are subject to the following anti-dumping duties:

Table 2.1.5

Tariff subheading	Description	Imported from or originating in	Rate of Anti-Dumping Duty
6301.40	Blankets (excl electric blankets) and traveling rugs of synthetic fibres, imported from Sepaka Tekstil	Turkey	388c/kg
6301.40	Blankets (excl electric blankets) and traveling rugs of synthetic fibres (excluding those imported from Ak-Pa te, Ihracat Pazarlama A,S..,Istanbul and Sepkapa tekstil)	Turkey	691c/kg
6301.40	Blankets (excl electric blankets)	China	2055c/kg

	and traveling rugs of synthetic fibres excluding those exported by Shanhai Yu Yuan Limited Company)		
6301.40	Blankets (excl electric blankets) and traveling rugs of synthetic fibres ,exported by Shanhai Yu Yuan Limited Company	China	1309c/kg
6301.90	Blankets (excl electric blankets) and traveling rugs of synthetic fibres imported from Sepaka Tekstil	Turkey	388c/kg
6301.90	Blankets (excl electric blankets) and traveling rugs of synthetic fibres (excluding those imported from Ak-Pa te, Ihracat Pazarlama A,S..,Istanbul and Sepkapa tekstil)	Turkey	691c/kg
6301.90	Blankets (excl electric blankets) and traveling rugs of synthetic fibres excluding those exported by Shanhai Yu Yuan Limited Company	China	1309c/kg

1.1.6 Production process

The design department will do different designs depending on the market. These are stages of production that take place:(1) Blending of fibres: the first process is to dye the fibres according to the required designs, and the to blend the fibres into the required mix. The fibres are blend and mixed before it is spun into yarn.(2) Spinning: the fibres are being combed, twisted and spun into yarn. (3) Weaving: the yarn is being woven into fabrics. Two systems are applied, namely jacquard machines for patterns and Dobby machines for stripes. (4) Finishing of blanket: the fabric are put through machines to be raised, combed and sheared to obtain a fluffy effect. The fabric is then cut and trimmed and seamed.

2.2 SACU PRODUCT

2.2.1 Description

The SACU products are similar to the imported products.

2.2.2 Application/end use

The SACU products and the imported products have similar end uses.

2.2.3 Tariff classification

The SACU product is currently classifiable under tariff subheadings 6301.40 and 6301.90 .

2.2.4 Production process

The following production process is used: First the blanket is design then the fibres are blended and dyed. (1) Blending of fibres: the first process is to dye the fibres according to the required designs, and the to blend the fibres into the required mix. The fibres are blend and mixed before it is spun into yarn. (2) Spinning: the fibres are being combed, twisted and spun into yarn.(3) Weaving: the yarn are being woven into fabrics. Two systems are applied namely jacquard machines for patterns and Dobby machines for stripes. (4) Finishing of blanket: the fabric are put through machines to be raised, combed and sheared to obtain a fluffy effect. The fabric is then cut and trimmed and seamed.

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 whether the products produced by the SACU industry are like products to those originating in or imported from PRC and Turkey.

Article 2.6 of the Anti-Dumping Agreement provides as follows:

> "Throughout this Agreement the term 'like product' ('produit similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.".

2.3.2 Analysis

In determining the likeness of products, the Commission uses the following criteria:

(a) raw material used;
(b) physical appearance and characteristics;
(c) method of manufacturing;
(d) customer demand and end use; and
(e) tariff classification.

1. Raw materials

The raw materials for both the imported and the domestic products are acrylic fibre.

2 Physical appearance and characteristics

The imported and the domestic products have similar physical appearance and characteristics.

3 Method of manufacturing

The imported and the domestic products are manufactured using the same method.

4 Customer demand and end use

The demand and the end use of the products sold domestically and those imported are the same for purposes of comparison.

5 Tariff classification

The products sold domestically and those imported are classifiable under the same six-digit tariff subheading.

6. Finding by the Commission

The Commission found that the SACU product and the imported products are "like products", for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

Article 11.3 of the Anti-Dumping Agreement provides as follows:

> "Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly **substantiated request made by or on behalf of the domestic industry** within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review."

Article 5.4 of the Anti-Dumping Agreement, further provides as follows:

> "The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.".

	% of market
Applicant	63
All Other SACU manufacturers	37
Total	100

The application is supported by 63 per cent of the SACU industry. The Commission found that the application was made "by or on behalf of the domestic industry".

4. DUMPING

Section 1(2) of the ITA Act, *(Definitions and Interpretation)* provides a definition of the term "dumping" as follows:

> "'dumping' means the introduction of goods into the commerce of the Republic or the common customs area at an export price contemplated in section 3(2)(a) that is less than the normal value, as defined in section 32(2), of those goods;"

4.1 NORMAL VALUE

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

> "'normal value' means
>
> (i) the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting countries of origin; or
>
> (ii) in the absence of a price contemplated in subparagraph (i), either –
> (aa)the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and fro profit; or
> (bb)the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative".

Section 32(4) of the ITA Act further provides as follows:

> (a) "If the Commission, when evaluating an application concerning dumping, concludes that normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country."

4.2 EXPORT PRICE

Export prices are determined in accordance with section 32(2)(a) of the ITA Act, which provides as follows:

> "'export price', subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;".

Section 32(5) of the ITA Act further provides as follows:

> "The Commission must, despite the definition of "export price" set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on reasonable basis".

Section 32(6) of the ITA Act provides as follows:

"Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned-

(a) there is no export price as contemplated in the definition of dumping;

(b) there appears to be an association or a compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or

(c) the export price actually paid or payable is unreliable for any other reason".

4.3 ADJUSTMENTS

Article 2.4 of the Anti-Dumping Agreement provides as follows:

> "A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.".

Both the Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. Paragraph 11.2 of the ITAC Anti-Dumping Regulations (ADR) require that adjustments should be requested in interested parties' original responses and must be substantiated, verifiable, directly related to the sales under consideration and clearly be demonstrated to have effected price comparability at the time of setting prices.

4.4 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the Anti-

Dumping Agreement and no anti-dumping duty will be imposed. The margin of dumping is calculated in the currency of the country of export.

4.5 INFORMATION SUPPLIED BY THE APPLICANT

The information in the submission was supplied by the applicant as no exporter responded in the matter.

4.6 METHODOLOGY IN THIS INVESTIGATION FOR TURKEY

4.6.1 Normal Value

Type of economy

Turkey is considered to be a country with a free market economy and therefore the definition of section 32(2)(b)(i) of the ITA Act applies.

Information based on "facts available"

The information in respect of the domestic sales in Turkey were based on information submitted (facts available) by the SACU industry as no exporter from Turkey responded in this matter, as is duly provided for in paragraph 32 of the ITAC Anti-Dumping Regulations.

The applicant obtained Turkish pricing at the Heimtextile international show in Germany from Sesli Tekstil, a Turkish trader and producer. The average normal value was US$ 6.13/K or Turkish lire(TL)9 371 868 (exchange rate applied was $1 = TL 1 528 853)

Export price from Turkey

The export price for Turkey was obtained from the official import statistics with regard to imports from Turkey. The import price per kg was price/kg it is calculated to be US $4.60 or TL 7 032 723.

Adjustments to normal values and export prices

The Commission does not consider adjustments that have not been requested, substantiated and are verifiable, as per the requirements of paragraph 11.2 of the ADR. No adjustments were, therefore, considered.

4.6.2 Comments by the Turkish Government

The response from the Turkish Government states that the "facts available" price used by the Commission is "most probably" the retail price which includes taxes.

4.6.3 Comments by the Commission

The comments submitted by the Turkish Government does not contain any specific detail other than general comments, which was in any event qualified by stating that the facts used by the SACU industry was of a "most probably" nature. The normal value was, in any event, obtained from Sesli Tekstil, a Turkish acrylic blanket producer, which exhibited at the Heimtextile International Show in Germany.

4.7 METHODOLOGY IN THIS INVESTIGATION FOR CHINA

4.7.1 Normal Value

4.7.1.1 Determination of the normal value

The normal value for China was calculated on the basis of the provisions of section 32(4) of the ITA Act.

4.7.1.2 Surrogate

Turkey was nominated by Texfed as a surrogate for purposes of determining the normal value for China, as no party from China responded in the matter.

Reasons for nominating Turkey

Texfed nominated Turkey a it regarded its economy to be at the same level of development as that of the Chinese economy with regard to the subject products. The blanket industry in both countries applies the same manufacturing techniques and uses similar machines.

4.7.2 Normal value

The information in respect of the domestic sales in China were based on Turkish (surrogate) information submitted by the SACU industry (facts available), as no exporter from China responded in this matter, and which is provided for in paragraph 32 of the ITAC Anti-Dumping Regulations.

The normal value is the domestic selling price in Turkey which is US$ 4.60 or TL 7 032 723 per kilogram.

4.7.3 Export price

The applicant used the official import statistics in order to calculate an average fob price/kg for China. This average price/ kg was calculated to be US $ 1.77 or TL 1 706 070 per kilogram.

Adjustments to export price

The Commission does not consider adjustments that have not been requested, substantiated and are verifiable, as per the requirements of paragraph 11.2 of the ADR. No adjustments were, therefore, considered.

4.8 Margins of dumping

The following dumping margins were calculated for China and Turkey:

Table 4.7.2.1

Country	China - calculated in US$	Turkey – in Turkish Lira
Normal value	6.13	9 371 868
Export price /kg	1.77	7 032 723
Margin of dumping	4.36	2 339 145
Margin of dumping as % of export price	246.3%	33.26%

With regard to Turkey, the Commission decided that as the dumping margin was found to be more-or-less similar to that found in the initial investigation five years ago (28% to 34%), that the existing finding remain unchanged.

4.11 SUMMARY - DUMPING

The Commission found dumping margins, as is detailed above, in respect of both China and Turkey.

5. MATERIAL INJURY

Article 11.3 of the Anti-Dumping Agreement provides as follows:

> "Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, **that the expiry of the duty would be likely to lead to continuation or recurrence of** dumping and **injury**. The duty may remain in force pending the outcome of such a review."

The Commission found, after consideration of the matter and facts before it, that the applicant submitted evidence that indicates that the expiry of the duty would be likely to lead to continuation or recurrence of injury.

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

Article 3 of the Anti-Dumping Agreement is entitled "Determination of injury". Footnote 9 to the word "injury" provides as follows:

> "Under this agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.".

5.2 GENERAL

Article 3.1 of the Anti-Dumping Agreement provides as follows:

> "A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both.
> (a) the volume of the dumped imports and the effects of the dumped imports on the prices in the domestic market for the like products, and
> (b) the consequent impact of these imports on domestic producers of such products".

Article 4.1 of the Anti-Dumping Agreement further provides as follows:

> "For purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic industry as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those

products,...".

The following consolidated injury analysis relates to Ahlesa and Aranda Textiles, which constitutes 63% of the total domestic production of the subject product.

The Commission decided this constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement, during its preliminary determination.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

The applicants advised that their motivation for the continuation of the duties is that imports from the cited countries will revert to what it was[1] before the imposition of the ad duties five years ago. See also paragraph 1.1.2 in this Report. The applicants also confirmed that blankets are extremely price- sensitive and that any removal of the anti-dumping duties would present a benefit to the importers.

The applicants also stated, in addition or alternatively, that the recent increase or surge in imports from the cited countries are sufficiently indicative of the *likelihood* to further increase imports if the definitive anti-dumping duties are revoked, and even more so now that the SA Rand has strengthened to a level that largely neutralises the benefits that were afforded by the anti-dumping duties after its imposition. Although the Dollar/Rand rate of exchange during 1999 was in the range of R5,90 to R6,20 to the US$1, the subsequent demise of the SA Rand to levels of above R8 to the US dollar effectively increased the rate of protection which has been eroded by the present increase in the value of the Rand (more-or-less back to 1999 Dollar/Rand exchange values).

5.3.1 Import volumes

With reference to Article 3.1(a)[see above], Article 3.2 of the Anti-Dumping Agreement provides as follows:

> "With regard to the volume of the dumped import, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member.".

In any dumping investigation, the Commission normally uses audited import statistic from SARS to determine the volume of the

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1 During 1997 & 1998 the SARS import statistics showed that the imports from China and Turkey amounted to 3479 tons and 3675 tons cumulatively, which is more-or-less the volume that the applicants anticipate will be imported from the cited countries (likely imports 3300 tons) if the ad duties are revoked.

subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The following table 5.3.1 shows the volumes of alleged dumped imports of the subject product since 1997 (anti dumping duty imposed 1999):

Table 5.3.1 Import statistics in tons in respect of the importation of acrylic blankets from China and Turkey and from other countries.

Table 5.3.1 in tons	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**
Turkey	2639	2462	132	35	43	101	268	129
China	840	1213	174	56	67	417	764	931
Total	**3479**	**3675**	**306**	**91**	**110**	**518**	**1032**	**1060**
% of total	**61,9%**	**78,2%**	**35,9%**	**24%**	**17%**	**55%**	**59,5%**	**66,2%**
Other countries	2141	1023	547	288	535	417	701	541
% of total	38%	22%	64%	76%	83%	44,6%	40%	33,8%
Grand total all	5620	4698	853	379	645	935	1733	1601

Notwithstanding the anti dumping duties in place, the *cumulatively* assessed volume of the dumped imports increased from 24% of total imports in 2000 to 66,2% in 2004, while imports from other countries decreased from 76% in 2000 to 33,8% in 2004. A *cumulative assessment* of the SARS import statistics shows that imports from the cited countries increased from 91 tons in 2000 to 1060 tons in 2004, an increase of over 1000%.

The Commission found that the products concerned (subject products) are still being imported (cumulatively assessed) in significant and increasing (rising) quantities from China and Turkey, the cited countries.

Comparative production facilities in China and Turkey

Texfed also advised that according to the latest ITMF information China consists of 405830 spindles and 380 million rotors for the spinning of yarn and 123 970 looms for the weaving of fabric. Turkey consists of 444 000 spindles and 5,7 million rotors for the spinning of yarn and 55 000 looms for the weaving of fabric. The number of spindles, rotors and looms in South Africa represent only 0,5%, 7% and 5,5% respectively of that of Turkey and only 0,5%, 0,1% and 2,4% respectively of that of China. One single factory in China could produce what the total South Africa produce.

5.3.2 Effect on Domestic Prices

With reference to Article 3.1(a) [the volume of dumped imports and its effect on prices], Article 3.2 of the Anti-Dumping Agreement further provides as follows:

> "With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.".

5.3.2.1 Price undercutting

The table below shows the effect of undercutting from respectively China and Turkey.

China	China - if duties are revoked	Turkey - if duties are revoked
As % of applicant's price	51%	-48%

The Commission found that the applicants showed that it will suffer price undercutting in respect of imports from China, but not in respect of imports from Turkey if the anti-dumping duties are revoked. The Commission, however, noted that the information in respect of the Turkish importers' landed costs was based on constructed information, as Turkish importers or exports had not responded in the matter.

5.3.2.2 Price depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the applicant's selling prices since the duty was imposed, and an estimate in the event of the duty expiring, which showing that its selling prices would decrease:

Price depression in Rand per kilogram for the SACU industry					
Rand/kg	2000	2001	2002	2003	Estimate if duty expires
	100	94	111	118	87

Table indexed due to confidentiality with 2000 as the base year.

5.3.2.3 Price suppression

Price suppression is the extent to which the cost of production is recovered in selling prices. To determine price suppression, a comparison is made of the cost of production as a percentage of

the selling price for each of the comparative years. This is done to determine whether the industry is experiencing price suppression. The following table shows this effect:

Price suppression in Rand per kilogram for Aranda					
Blankets price/kg	2000	2001	2002	2003	Estimate if duty expires
Average price suppression	100	102	106	106	133

Table indexed due to confidentiality with 2000 as the base year.

The information in the table shows that the SACU industry's situation will deteriorate if the anti-dumping duties are revoked.

5.3.3 Actual and potential decline in sales

The table below shows the effect of the decline in sales which shows that the sales volumes will decline if the duties are revoked.

Sales volumes in tons of the SACU producers					
Sales Tons	2000	2001	2002	2003	Estimate if duty expires
	100	124	132	152	100

Table indexed due to confidentiality with 2000 as the base year.

5.3.4 Profit

The table below shows the profit of the applicant from 2000 onwards and also shows that the profit will decline if the duties are revoked.

Comparable profits of the SACU industry in R' million					
Profits/R'mill	2000	2001.	2002	2003	Estimate if duty expires
	100	92	340	363	-700

Table indexed due to confidentiality with 2000 as the base year.

The non-confidential version of the application showed the likely profits of one of the producers (Firm B) to be "0" whilst a calculation of its likely sales and costs showed that it would realize a likely loss. This resulted in the "collective" likely loss being given as -700, instead of the –137, that was reflected in the non-confidential version of the application.

5.3.5 Output

The table below shows the output from 2000 onwards and also that the output will decline if the duties are revoked.

Output (production) in tons by the SACU industry					
Output in tons	2000	2001	2002	2003	Estimate if duty expires
	100	105	144	154	110

Table indexed due to confidentiality with 2000 as the base year.

5.3.6 Market share

The table below shows the market share from 2000 onwards and the assumed situation if the anti-dumping duties are revoked. It is shown that the SACU industry will lose market share if the anti-dumping duties are revoked.

Market share analysis					
Market share tons	2000	2001	2002	2003	Estimate if duty expires
SACU market share	100	81	76	78	51
Dumped imports	100	89	195	326	1128

Table indexed due to confidentiality with 2000 as the base year.

5.3.6 Productivity

The table below shows the productivity of the domestic industry from 2000 onwards and the assumed situation if the anti-dumping duties are revoked. The Commission noted that although it appears that productivity will increase, which will be as a result of fewer employees being employed when lower outputs are recorded, if the anti-dumping duties are revoked.

Productivity indicator measured on the basis of the ton-output per employee					
Tons output / employee	2000	2001	2002	2003	Estimate if duty expires
Employee productivity:	3,7	4,9	4,7	5,2	5,9

Table indexed due to confidentiality with 2000 as the base year.

5.3.7 Return on investment

The table below shows the return on investment from 2000 onwards and the assumed situation if the anti-dumping duties are revoked. It shows that the anticipated return will decline if the anti-dumping duties are revoked:

Return on investment for the SACU industry					
Years	2000	2001.	2002	2003	Estimate if duty expires
Average roi	100	82	60	120	-360

Table indexed due to confidentiality with 2000 as the base year.

5.3.8 Utilization of production capacity

The table below shows the utilization of production capacity from 2000 onwards and the assumed situation if the anti-dumping duties are revoked. It shows that the anticipated utilization will decline if the anti-dumping duties are revoked:

Utilization of production capacity					
Tons	2000	2001	2002	2003	Estimate if duty expires
	100	46	61	61	44

Table indexed due to confidentiality with 2000 as the base year.

5.3.9 Factors affecting domestic prices

(i) The magnitude of the margin of dumping

Margins of dumping	
China	246.3%
Turkey	33.26%

(ii) The following table shows details of *employment, inventories and average wages* from 2000 onwards and the anticipated situation if the anti-dumping duties are revoked. It shows that employee numbers will decrease, that inventories will increase and that the average wages will decrease. With regard to average wages the Commission also noted that the applicant advised that the decrease in wages was not to be seen as a linear decrease, but that it is assumed that the industry will change structurally to the effect that certain products may be discontinued with the effect that a totally new structure could emerge.

	2000	**2001**	**2002**	**2003**	**Estimate if duty expires**
Employee numbers	100	78	115	110	68
Inventory in tons	100	95	87	112	145
Average wages/employee	100	91	76	85	51

Table indexed due to confidentiality with 2000 as the base year.

(vi) Growth and ability to raise investments

The applicant stated that the total market for blankets decreased and that the current return on investment is so unsatisfactory that there is no

possibility to attract any capital or investment.

5.4 Summary (conclusion) of Commission's findings with regard to material injury

The Commission considered the applicant's actual information for three years, as well as a *likelihood* assumption in the event of the revocation of the anti-dumping duties. This was done on the basis of considering each of the historically based indicators separately and also on the basis of a total evaluation of all the factors collectively, in the final determination. The basis of arguments and motivations with regard to the likely increase in the imports of the subject products from the cited countries were found to justify the finding that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury.

The Commission considered the following material injury factors, amongst other, in its final determination: the pricing factors, such as price undercutting, price depression and suppression, as well as imports from the cited countries. It also considered sales, output, profits, return on net assets, utilization of production capacity. The issue of productivity was also considered, but the Commission found that the analysis shows a false perception in that fewer production staff would reflect an increase in productivity, whereas the SACU industry's trading results would decrease to the extent that fewer staff would be employed under circumstances where lower outputs are recorded as a result of the expected increased imports of dumped goods from the cited countries. The Commission also considered the applicant's cash flow, inventory levels and employment, as well as the effect on wage levels and the ability to raise investments, if the anti-dumping duties are revoked.

After consideration of the basis of arguments, comments, facts and the evidence before it, the Commission found that the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of material injury. See also paragraph 1.1.2 of this Report in his regard.

5.5 Comments by the Turkish Government

The Turkish Government alleges in its comments that the SACU industry used ("reached") estimated figures for selling prices of the SACU producers, as well as for the imported products. The Turkish Government further states that it was invited to examine the non-confidential application where it is not explained or demonstrated "how it reached the estimated figures". The Turkish Government also challenges the Commission's findings on the assumptions made by the SACU industry stating that the accuracy should have been verified. The Turkish Government states that ("contends") that the findings and decisions of the authority should be based on the authority's own analysis and not on information or estimations provided by the

applicants. Then lastly, the Turkish Government stated that the Commission had not considered the market situation and pricing in both Turkey and the SACU area prior to making a finding.

5.5 Comments by the Commission

The information in respect of the SACU producers was based on actual (historical) and (future assumptions) figures whilst that of the imported like products were based on assumptions. With regard to the comments on the non-confidential version of the SACU industry's application it must be noted that this information was used by the Commission to determine whether the likelihood of a continuation of injury exists. This was demonstrated as such by the SACU industry. On the issue of verifying the accuracy of estimations, it must also be noted that this information is based on assumptions made by the applicants in the matter, which cannot be verified against any financial records (see also paragraph 1.1.2 in this regard).

On the issue of the statement by the Turkish Government that the authority should have based its findings on its own analysis and not on that of the applicants in the matter it must be stated that Article 11.3 of the WTO Anti-Dumping Agreement clearly states that a 5 year review should be undertaken on the initiative of the authority or on request by the industry concerned. In this instance the Commission invited the SACU industry to respond within a prescribed time frame and then to show (give assumptions) of what the situation would be if the anti-dumping duties should be revoked. This was done and the Commission duly found that the likelihood exists that injury would continue if the duties are revoked.

With regard to the issue of the market situation and pricing in both Turkey and the SACU area, it must be noted that no party from Turkey responded in the matter and the Commission was reliant on facts available, as was provided by the applicant, with regard to the normal values and export prices.

6. SUMMARY OF FINDINGS

6.1 Dumping

The Commission found the following dumping margins:

Margin of dumping as % of export price for the following countries	Duty as % percentage	Specific duty equivalent
China	246.3%	R28,34/kg
Turkey	33.26%	R10,08/kg

The Commission noted that the margins found were based on facts available as was submitted by the SACU industry in its founding application as no exporter from either Turkey or China responded in the matter.

6.2 Material injury

The Commission found that that the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of material injury.

6.3 Causal link

The Commission does not consider the issue of causal link in sunset reviews as this issue was already addressed in the initial investigation's findings.

7. FINAL RECOMMENDATION

The Commission found that the SACU industry had shown that the expiry of the duty would be likely to lead to a recurrence of dumping and injury and accordingly recommends to the Minister of Trade and Industry that the following anti-dumping duties be imposed and/or maintained:

(1) For China it is proposed that a specific duty of R28,34 per kilogram be imposed, and

(2) For Turkey it is proposed that the current (present) duty structure be maintained,

in respect of the importation of the subject products, classifiable under tariff subheadings 6301.40 and 6301.90, to the extent shown in the table below and with effect from the date on which SARS can impose the said duty:

Originating in or exported from the following countries	**Recommended anti-dumping duties to be imposed/maintained**
China	R28,34/per kilogram
Turkey	Current duty structure in place to be maintained – that is – 388 cents per kg or 691 cents per kg