

REPORT NO. 569

EXCLUSION OF ADULT DIAPERS UNDER REBATE ITEM 412.13 AND AMENDMENT OF REBATE ITEM 320.12 WHICH PROVIDES FOR THE DUTY FREE IMPORTATION OF RAW MATERIALS USED IN THE MANUFACTURING OF BABY DIAPERS TO ALSO INCLUDE ADULT DIAPERS

The International Trade Administration Commission of South Africa herewith presents its Report No. 569: Exclusion of adult diapers under rebate item 412.13 and amendment of rebate item 320.12 which provides for the duty free importation of raw materials used in the manufacturing of baby diapers to also include adult diapers



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Siyabulela Tsengiwe
CHIEF COMMISSIONER

PRETORIA
23/11/2017

REPUBLIC OF SOUTH AFRICA

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 569

Exclusion of adult diapers under rebate item 412.13 and amendment of rebate item 320.12 which provides for the duty free importation of raw materials used in the manufacturing of baby diapers to also include adult diapers

Synopsis

Validus Medical (Pty) Ltd (Validus), hereon referred to as the applicant, applied for the exclusion of adult diapers under rebate item 412.13 and the amendment of rebate item 320.12, which provides for the duty free importation of raw materials used in the manufacturing of baby diapers, to also include the duty free importation of raw materials used in the manufacturing of adult diapers.

The Commission found that:

- The applicant is the only local manufacturer of adult diapers;
- The applicant is in a position to supply in the reasonable market requirements for the range of adult diapers as described in the rebate structure;
- Significant price disadvantages are experienced *vis-à-vis* foreign manufacturers exporting the product to SACU;
- The domestic industry is unable to compete with imported products, given the existing rebate structure. This adversely affects domestic investment and employment opportunities;
- The applicant's levels of profitability and capacity utilisation have declined;
- The exclusion of adult diapers under rebate 412.13 would serve as encouragement to the domestic industry to increase its manufacturing capacity of the subject product; and
- Amendment of rebate item 320.12 would assist the local manufacturer in addressing an anomaly that exists with regard to the importation of raw

materials not manufactured locally that are used for the manufacturing of adult diapers on which duty has to be paid, whilst the end product is imported duty free.

On balance, the recommended amendments on the above mentioned rebate provisions would enable the applicant manufacturing adult diapers to fully utilise existing under-utilised production capacity thereby achieving cost advantages arising from increased output due to operational efficiencies.

The Commission also found that rebate item 320.12 provides for full rebate of duty for similar raw materials, which are used for the manufacture of disposable diapers for babies. The investigation has shown that in terms of baby and adult diapers, the composition and construction is fundamentally the same, the only difference being attributed to size. Both baby and adult diapers use similar raw materials.

In the light of the foregoing, the Commission recommended the exclusion of adult diapers under rebate item 412.13 and amendment of rebate item 320.12 which provides for the duty free importation of raw materials used in the manufacturing of baby diapers to also include adult diapers as follows:

Rebate item 320.12

Rebate item 320.12	Tariff Subheading	Rebate code	Description	Extent of Rebate
	3919.10	01.06	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of polymers of propylene, in rolls of a width not exceeding 200 mm, for the manufacture of disposable napkins (diapers)	Full Duty
	3920.10	01.06	Other plates, sheets, film, foil and strip, of polymers of ethylene, of a thickness exceeding 0,012 mm but not exceeding 0,06 mm, non-cellular and not reinforced, laminated, supported or similarly combined with other materials, for the manufacture of disposable napkins (diapers)	Full Duty
	3920.20	01.06	Other plates, sheets, film, foil and strip, of polymers of propylene, of a thickness exceeding 0,012 mm or more but not exceeding 0,06 mm, not heat shrinkable, non-cellular and not reinforced, laminated, supported or similarly combined with other materials, for the manufacture of disposable napkins (diapers)	Full Duty
	5404.11	01.06	Synthetic monofilament, elastomeric, of 67 dtex or more and of which no cross-sectional dimension exceeds 1 mm, for the manufacture of disposable napkins (diapers)	Full Duty
	5603.1	01.05	Non-wovens of man-made filaments, whether or not impregnated, coated, covered or laminated, of a mass not exceeding 150 g/m ² , for the manufacture of disposable napkins (diapers) , at such times, in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit	Full Duty
	5603.9	01.05	Non-wovens (excluding those of man-made filaments), whether or not impregnated, coated, covered or laminated, of a mass not exceeding 150 g/m ² , for the manufacture of disposable napkins (diapers) , at such times, in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit	Full duty
	5903.90	01.06	Textile fabrics impregnated, coated, covered or laminated with plastics [excluding fabrics impregnated, coated, covered or laminated with poly (vinyl chloride) and polyurethane], of a mass of less than 200 g/m ² , for the manufactured of disposable napkins (diapers)	Full duty

Rebate 412.13

Rebate item	Proposed amendment	Rate of rebate
412.13	<i>ileal bladder appliances, and parts thereof; skin protective preparations for use with ostomy appliances and incontinence pads</i>	Full

The Commission also recommended that the duty structure for adult diapers be reviewed within 12 months from date of implementation.

The Commission further rejected the applicant's request that the amendment of rebate item 320.12 be implemented with retrospective effect, owing to the fact that the applicant's non-compliance with the rebate provision's conditions was, *inter alia*, not as a result of an undue delay in processing the application or as a result of factors within the control of the State.

THE APPLICATION AND TARIFF POSITION

- 1 Validus Medical (Pty) Ltd (Validus), hereon referred to as the applicant, applied for the exclusion of adult diapers under rebate item 412.13 and the amendment of rebate item 320.12, which provides for the duty free importation of raw materials used in the manufacturing of baby diapers, to also include the duty free importation of raw materials used in the manufacturing of adult diapers.
- 2 The applicant submitted that it has in the past incorrectly cleared imported raw materials under the 4th Schedule rebate provision i.e. rebate item 412.13, that makes provision for the importation of finished adult diapers, as it was under the impression that the rebate provision covered input materials used in the manufacture of adult diapers. This has now come to the fore in a SARS audit, and SARS has indicated an intention to retrospectively claim import duties on imported raw materials imported by the applicant. The applicant therefore requested that rebate item 320.12 be retrospectively amended.
3. As reasons for the application, the applicant, among others, stated that:
 - *“Validus mainly imports raw materials for purposes of manufacturing adult diapers;*
 - *Rebate item 412.13 of Schedule 4 to the Customs and Excise Act provides for a full rebate of duty on imported adult diapers. However, there is no concomitant provision to rebate the duty on the raw materials needed to manufacture these products (adult diapers); and*
 - *Local manufacturers find themselves in a situation where they must pay duties on raw materials to manufacture the product whilst the finished imported product (manufactured from the same raw materials) is duty free putting the local manufacturers at a disadvantage.”*
4. The application was published in the Government Gazette on 22 September 2017, for interested parties to comment, as follows:

“Exclusion of adult diapers under rebate item 412.13 and amendment of rebate item 320.12 which provides for the duty free importation of raw materials used in the manufacturing of baby diapers to also include adult diapers”

5. The existing and requested structure of the concerned rebate provisions reads as follows:

Table 1: Current structure for rebate item 320.12

Rebate Item	Industry: Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles, of any material			Extent of Rebate
320.12	Tariff Subheading	Rebate code	Description	
	3919.10	01.06	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of polymers of propylene, in rolls of a width not exceeding 200 mm, for the manufacture of disposable napkins for babies	Full Duty
	3920.10	01.06	Other plates, sheets, film, foil and strip, of polymers of ethylene, of a thickness exceeding 0,012 mm but not exceeding 0,06 mm, non-cellular and not reinforced, laminated, supported or similarly combined with other materials, for the manufacture of disposable napkins for babies	Full Duty
	3920.20	01.06	Other plates, sheets, film, foil and strip, of polymers of propylene, of a thickness exceeding 0,012 mm or more but not exceeding 0,06 mm, not heat shrinkable, non-cellular and not reinforced, laminated, supported or similarly combined with other materials, for the manufacture of disposable napkins for babies	Full Duty
	5404.11	10.06	Synthetic monofilament, elastomeric, of 67 dtex or more and of which no cross-sectional dimension exceeds 1 mm, for the manufacture of disposable napkins for babies	Full Duty
	5603.1	10.06	Nonwovens of man-made filaments, whether or not impregnated, coated, covered or laminated, of a mass not exceeding 150 g/m ² , for the manufacture of disposable napkins for babies , at such times, in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit	Full Duty
	5603.9	01.05	Nonwovens (excluding those of man-made filaments), whether or not impregnated, coated, covered or laminated, of a mass not exceeding 150 g/m ² , for the manufacture of disposable napkins for babies , at such times, in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit	Full Duty
	5903.90	01.06	Textile fabrics impregnated, coated, covered or laminated with plastics [excluding fabrics impregnated, coated, covered or laminated with poly (vinyl chloride) and polyurethane], of a mass of less than 200 g/m ² , for the manufactured of disposable napkins for babies	Full Duty

6. The table above shows that currently, rebate item 320.12 provides for rebate of the duty on raw materials, which are used for the manufacture of disposable diapers for babies.

Table 2: Requested rebate structure for rebate Item 320.12

Rebate Item 320.12	Tariff Subheading	Rebate code	Description	Extent of Rebate
	3919.10	01.06	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of polymers of propylene, in rolls of a width not exceeding 200 mm, for the manufacture of disposable napkins (diapers)	Full Duty
	3920.10	01.06	Other plates, sheets, film, foil and strip, of polymers of ethylene, of a thickness exceeding 0,012 mm but not exceeding 0,06 mm, non-cellular and not reinforced, laminated, supported or similarly combined with other materials, for the manufacture of disposable napkins (diapers)	Full Duty
	3920.20	01.06	Other plates, sheets, film, foil and strip, of polymers of propylene, of a thickness exceeding 0,012 mm or more but not exceeding 0,06 mm, not heat shrinkable, non-cellular and not reinforced, laminated, supported or similarly combined with other materials, for the manufacture of disposable napkins (diapers)	Full Duty
	5404.11	01.06	Synthetic monofilament, elastomeric, of 67 dtex or more and of which no cross-sectional dimension exceeds 1 mm, for the manufacture of disposable napkins (diapers)	Full Duty
	5603.1	01.05	Non-wovens of man-made filaments, whether or not impregnated, coated, covered or laminated, of a mass not exceeding 150 g/m ² , for the manufacture of disposable napkins (diapers) , at such times, in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit	Full Duty
	5603.9	01.05	Non-wovens (excluding those of man-made filaments), whether or not impregnated, coated, covered or laminated, of a mass not exceeding 150 g/m ² , for the manufacture of disposable napkins (diapers) , at such times, in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit	Full duty
	5903.90	01.06	Textile fabrics impregnated, coated, covered or laminated with plastics [excluding fabrics impregnated, coated, covered or laminated with poly (vinyl chloride) and polyurethane], of a mass of less than 200 g/m ² , for the manufactured of disposable napkins (diapers)	Full duty

7. The above table shows that certain of the rebate provisions will be administered by SARS whilst only the non-woven fabrics classifiable under tariff heading 56.03 will be imported under rebate provisions, which are subject to an ITAC permit.
8. The request for the exclusion of adult diapers under rebate item 412.13 is as follows:

Table 3: Current structure for rebate item 412.13

Rebate item	Schedule 4 rebate item	Rate of rebate
412.13	<i>ileal bladder appliances, and parts thereof; skin protective preparations for use with ostomy appliances; incontinence undergarments, including napkins (excluding babies napkins) and incontinence pads</i>	Full

9. The local importers are utilising the above rebate provision to import the subject products. As a consequence of this rebate provision, the local manufacturer of adult diapers has experienced challenges in competing with these products in the domestic market.

10. The table below indicates the requested amendment of rebate item 412.13:

Table 4: Requested structure for rebate item 412.13

Rebate item	Proposed amendment	Rate of rebate
412.13	<i>Ileal bladder appliances, and parts thereof; skin protective preparations for use with ostomy appliances and incontinence pads</i>	<i>Full</i>

11. The Commission envisages that the exclusion of adult diapers under rebate item 412.13 would improve the competitiveness position of the domestic industry manufacturing the subject product and it would enable it to utilise its significantly under-utilised capacity and achieve economies of scale.

INDUSTRY AND MARKET

12. An adult diaper is a diaper made to be worn by a person with a body larger than that of an infant or toddler. Diapers can be necessary for adults with various conditions, such as incontinence, mobility impairment, severe diarrhea or dementia. Adult diapers are made in various forms, including those resembling traditional child diapers or underpants.

13. The subject product is typically used by people with conditions such as bad bladder control, bedridden individuals suffering from dementia or mental health or urinal /fecal incontinence. Adult diapers provide protection to adults with uncontrolled body wastes to better manage such conditions and enhance quality of life. Basically the product is typically used by individuals whose bodies are unable to function normally, whether permanently or temporarily. Elderly individuals are also some of the significant users of the subject products.

14. The single most important property of a diaper, cloth or disposable, is its ability to absorb and retain body wastes and moisture. It consists of an absorbent pad

sandwiched between two sheets of non-woven fabric. The pad is specially designed to absorb and retain body fluids, and the non-woven fabric gives the diaper a comfortable shape and helps prevent leakage.

15. The raw materials, for which the rebate provision is required, are used in the manufacturing of disposable adult diapers.
16. The diapers concerned are made by a multi-step process in which the absorbent pad is first vacuum-formed, then attached to a permeable top sheet and impermeable bottom sheet. The components are sealed together by the application of heat or ultrasonic vibrations. Elastic fibers are attached to the sheets to gather the edges of the diaper into the proper shape so that it fits comfortably around the legs and crotch. When properly fitted, the disposable diaper will retain body fluids that pass through the permeable top sheet and are absorbed into the pad.
17. The non-woven fabric is held in place by a non-woven fabric sheet forming the body of the diaper. There are a variety of other ancillary components, such as elastic threads, hot melt adhesives, strips of tape or other closures, and inks used for printing decorations.
18. Validus Medical is the only local manufacturer of the subject product. The applicant however imports various raw materials from outside the SACU region to be used in the manufacturing of the adult diapers.
19. The following companies were identified as interested parties, importers and/or suppliers of the product in question:
 - Hartmann-Vitamed (Pty) Ltd
 - Spunchem International (Pty) Ltd
 - SCA South Africa (Pty) Ltd
 - Dipersworld CC
 - Exigo Industries (Pty) Ltd
 - Thembakonke Projects CC and
 - National Pride, a division of Lodestone Brands (Pty) Ltd

20. The applicant's capacity utilisation for 2016 was 38%, leaving available capacity that could be used to service the domestic market.
21. The applicant's estimated market share remained at 30% to 35% for the three year period.
22. The Commission established that the SACU market for adult diapers is dominated by imports accounting for more than 60% of the domestic market. The applicant experienced a decline in profit margins during the period under investigation.
23. The local manufacturer has made significant investments in the manufacture of the subject product.

COMPETITIVE POSITION

24. According to price information at the Commission's disposal, the applicant experienced significant price disadvantages *vis-à-vis* foreign manufacturers of the subject product when the landed cost of imported products is compared to the ex-factory selling price of the applicant.

COMMENTS RECEIVED

25. Comments objecting to the application were received from importers and other interested parties. Objections, in the main, centred on the cost-raising effect of the duty. It was further stated that the applicant is uncompetitive against similar imported products because of its lack of capacity to supply the SACU market.
26. The application was supported by the Textile Federation of South Africa.

FINDINGS

27. The Commission found that:
 - The applicant is the only local manufacturer of adult diapers;
 - The applicant is in a position to supply in the reasonable market requirements for the range of adult diapers as described in the rebate structure;

- Significant price disadvantages are experienced *vis-à-vis* foreign manufacturers exporting the product to SACU;
- The domestic industry is unable to compete with imported products, given the existing rebate structure. This adversely affects domestic investment and employment opportunities;
- The applicant's levels of profitability and capacity utilisation have declined;
- The exclusion of adult diapers under rebate 412.13 would serve as encouragement to the domestic industry to increase its manufacturing capacity of the subject product; and
- Amendment of rebate item 320.12 would assist the local manufacturer in addressing an anomaly that exists with regard to the importation of raw materials not manufactured locally that are used for the manufacturing of adult diapers on which duty has to be paid, whilst the end product is imported duty free.

28. On balance, the recommended amendments on the above mentioned rebate provisions would enable the applicant manufacturing adult diapers to fully utilise existing under-utilised production capacity thereby achieving cost advantages arising from increased output due to operational efficiencies.

29. The Commission also found that rebate item 320.12 provides for full rebate of duty for similar raw materials, which are used for the manufacture of disposable diapers for babies. The investigation has shown that in terms of baby and adult diapers, the composition and construction is fundamentally the same, the only difference being attributed to size. Both baby and adult diapers use similar raw materials.

RECOMMENDATION

30. In the light of the foregoing, the Commission recommended the exclusion of adult diapers under rebate item 412.13 and amendment of rebate item 320.12 which provides for the duty free importation of raw materials used in the manufacturing of baby diapers to also include adult diapers as follows:

Rebate item 320.12

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Rebate 412.13

Rebate Item	Proposed amendment	Rate of rebate
412.13	<i>ileal bladder appliances, and parts thereof; skin protective preparations for use with ostomy appliances and incontinence pads</i>	Full

31. The Commission also recommended that the duty structure for adult diapers be reviewed within 12 months from date of implementation.
32. The Commission further rejected the applicant's request that the amendment of rebate item 320.12 be implemented with retrospective effect, owing to the fact that the applicant's non-compliance with the rebate provision's conditions was, *inter alia*, not as a result of an undue delay in processing the application or as a result of factors within the control of the State.