

REPORT NO. 584

REDUCTION IN THE RATE OF CUSTOMS DUTY ON ETHYLENE-ALPHA-OLEFIN COPOLYMERS, HAVING A SPECIFIC GRAVITY OF LESS THAN 0.94

The International Trade Administration Commission herewith presents its Report No. 584:
**REDUCTION IN THE RATE OF CUSTOMS DUTY ON ETHYLENE-ALPHA-OLEFIN
COPOLYMERS, HAVING A SPECIFIC GRAVITY OF LESS THAN 0.94, with
recommendations.**


.....
**MELULEKI NZIMANDE
CHIEF COMMISSIONER**

PRETORIA

01/06/2018

REPUBLIC OF SOUTH AFRICA

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 584

REDUCTION IN THE CUSTOMS DUTY ON ETHYLENE-ALPHA-OLEFIN COPOLYMERS, HAVING A SPECIFIC GRAVITY OF LESS THAN 0.94

Synopsis

West African Group (Pty) Ltd (WAG), hereon referred to as the applicant, applied for a reduction in the rate of customs duty on ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94 [*Commonly known as Linear Low Density Polyethylene (LLDPE)*], classifiable in tariff subheading 3901.40 from 10 per cent *ad valorem* to free of duty with retrospective effect from the date of submission of this application, being 6 December 2017.

WAG is an importer and distributor of a wide range of virgin polymers, specialized films, synthetic & natural rubbers, and specialty chemicals across Southern Africa. These virgin polymer products are used in a wide range of applications by the plastics converting industry. The company is not involved in the production or further processing of these polymers.

The Commission considered the application in light of the information at its disposal. In particular the Commission took the following factors into account:

- The industry manufacturing the subject product is able to meet the full market requirements for the subject product;
- The price advantage experienced by the local manufacturer *vis-à-vis* foreign manufacturers exporting the subject product to SACU;
- The significant portion of the imports origination from East-Asia and the Middle-East;

- Amendment of the tariff structure in 2017 in respect of the tariff subheading in question by SARS in compliance with the World Customs Organisation; and,
- Request for retrospective amendment of customs duty.

The Commission found that the subject product was, prior to HS2017, classifiable under tariff subheading 3901.90.90 at a rate of customs duty of 10 per cent *ad valorem*. Since the implementation of HS2017, products classifiable under tariff subheading 3901.90.90 were transposed to tariff subheading 3901.40, which also attracts a 10 per cent *ad valorem* duty.

The Commission concluded that the recommended duty structure would enable the domestic downstream industry manufacturing various plastic products using the subject product as an input to be competitive against similar imported end products.

The Commission also found, in respect of the request for retrospective amendment of customs duty, that no amendment of customs duty has taken place in relation to the tariff subheading concerned, before or after the amendment of the article description by SARS.

ITAC considers recommending a retrospective reduction of customs duties only in exceptional cases because of administrative and fiscal concerns and only in instances where an applicant can point to an action outside its control that has led to it suffering meaningful hardship.

The Commission found that no justification exists for the amendment of customs duty in respect of the subject product, with retrospective effect.

In light of the foregoing, the Commission decided that the rate of duty on on ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94, classifiable in tariff subheading 3901.40, be reduced from 10% *ad valorem* to free of duty.

THE APPLICATION AND TARIFF POSITION

1. **West African Group (Pty) Ltd (WAG)**, hereon referred to as the applicant, applied for a reduction in the rate of customs duty on ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94 [*Commonly known as Linear Low Density Polyethylene (LLDPE)*], classifiable in tariff subheading 3901.40 from 10 per cent *ad valorem* to free of duty with retrospective effect from the date of submission of this application, being 6 December 2017.
2. WAG is an importer and distributor of a wide range of virgin polymers, specialized films, synthetic & natural rubbers, and specialty chemicals across Southern Africa. These virgin polymer products are used in a wide range of applications by the plastics converting industry. The company is not involved in the production or further processing of these polymers.
3. As reasons for the application, the applicant stated, among others, that:
 - *“The local industry has imported the subject product under tariff heading 3901.10, at free of customs duty. In 2017, the subject product was transposed to tariff subheading 3901.40 which carries a customs duty of 10% ad valorem.”*
 - *The local producer of the subject product has the capacity to supply only 47% of the market, leaving a large portion of the market reliant on imported material. A change in the rate of duty currently payable by the importers to 10% of the subject product will have a severe impact on the country's trade deficit and balance of payments.*
 - *Given the high unemployment rate and tough economic environment that the industry faces, any increase in price will further aid to the hardships already suffered by the consumers and should therefore be avoided at all costs.”*

4. The application was published in the *Government Gazette* on 16 March 2018, for interested parties to comment, as follows:

Reduction in the rate of duty on:

"Ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94 [Commonly known as Linear Low Density Polyethylene (LLDPE)], classifiable in tariff subheading 3901.40 from 10% ad valorem to free of duty with retrospective effect from the date of submission of this application, being 6 December 2017."

5. The existing tariff structure for the subject product reads as follows:

Table 1: Tariff position for the subject product

Heading/ Tariff subheading	Article Description	S. Unit	Rate of duty				
			General	EU	EFTA	SADC	MERCOSUR
39.01	Polymers of ethylene, in primary forms:						
3901.10	Polyethylene having a specific gravity of less than 0,94	kg	free	free	free	free	free
3901.20	Polyethylene having a specific gravity of 0,94 or more	kg	free	free	free	free	free
3901.40	Ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94	kg	10%	free	free	free	10%

6. Table 2 below indicates the requested tariff structure in respect of LLDPE classifiable under tariff subheading 3901.40:

Table 2: Requested tariff position for the subject product

Heading/ Tariff subheading	Article Description	S. Unit	Rate of duty				
			General	EU	EFTA	SADC	MERCOSUR
39.01	Polymers of ethylene, in primary forms:						
3901.10	Polyethylene having a specific gravity of less than 0,94	kg	free	free	free	free	free
3901.20	Polyethylene having a specific gravity of 0.94 or more	kg	free	free	free	free	free
3901.40	Ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94	kg	free	free	free	free	free

7. Table 3 below indicates the tariff structure of LLDPE before SARS implemented the HS2017 amendments on 01 January 2018, in terms of, *inter alia*, products classifiable under tariff subheading 3901.90.90:

Table 3: Tariff structure of LLDPE before the SARS HS2017 amendments implemented on 01 January 2017:

Heading/ Tariff subheading	Article Description	S. Unit	Rate of duty					
			General	EU	EFTA	SADC	MERCOSUR	
39.01	Polymers of ethylene, in primary forms:							
3901.10	Polyethylene having a specific gravity of less than 0.94							
3901.10.10	Virgin	kg	free	free	free	free	free	
3901.10.90	Other	kg	10%	free	free	free	10%	
3901.30	Ethylene-vinyl acetate copolymers:							
3901.90	Other							
3901.90.90	Other		10%	free	free	free	free	

8. Table 3 above, shows that, before the implementation of HS2017 on 1 January 2017, LLDPE was classifiable under tariff subheading 3901.90.90 at 10% *ad valorem* duty under the general column.

INDUSTRY AND MARKET

9. The SACU industry consists of one upstream manufacturer of various primary polymers, which include the subject product, namely, Sasol South Africa ("Sasol") as well as various importers who are traders in various polymer products and downstream manufacturers in the plastic sector.
10. IPAP 2017/18 – 2019/20 (p128), stated that the plastics industry is a significant contributor to the economy, with a turnover of R75 bn in 2015, representing about 1.9% of GDP and approximately 16.5% of the manufacturing sector. The plastics industry employs around 60,000 people (both formal and informal) with almost 1,800 companies across the plastics supply chain. Plastics conversion plants are generally small to medium-sized, family-owned businesses. The export value of plastic products in 2015 was R15 bn, as against imports to the value of R30 bn, leading to a trade deficit of R15 bn; an increase of R5 bn compared to the 2014 trade deficit.

11. According to a Report by the Centre for Competition, Regulation and Economic Development (CCRED) for the Plastics Conversion Industry Strategy, dated 17 June 2014, the plastics sector in South Africa is characterised by a highly concentrated upstream industry. Large-scale production of polymer chemicals arises as a result of technical requirements with the minimum efficient scale of present investments exceeding the size of the South African domestic market in some of the polymers, for example polypropylene. This also implies relatively capital-intensive production and significant barriers to entry. In contrast, the manufacture of plastic products is characterised by relatively low production volumes. These products are differentiated by their qualities and the products into which they form inputs, such as motor vehicles, building materials, electrical products, and packaging materials. Cost competitiveness is very important to the sector and this is particularly the case for commodity goods that can easily be imported.
12. The Report for the Plastics Conversion Industry Strategy further stated that the main input for plastic converters is polymer resins, namely; polypropylene, polyethylene, polyvinyl chloride, polyethylene terephthalate and polystyrene. Of these polymers, polypropylene, polyethylene, polyethylene terephthalate and polyvinyl chloride are produced locally. High density polyethylene (HDPE), linear low density polyethylene (LLDPE), low density polyethylene (LDPE) and polypropylene (PP) are the most commonly used resins in South Africa and collectively account for 68% of polymer consumption (DTI, 2013). Packaging represents approximately 55% of the total domestic production.
13. Information obtained from the applicant indicated that Sasol, the local manufacturer, in 2017, produced LLDPE at volumes which represented 47% of the SACU market.
14. Sasol estimated its market share for the subject product at 50%. As the sole manufacturer of the subject product, the rest of the market requirement is imported by local traders and downstream manufacturers.
15. Information at the Commission's disposal indicated that due to the highly capital intensive nature in terms of the production of its primary polymers, Sasol employs less employees in the production of LLDPE. The local manufacturer has made significant investments in the production of the subject product.

16. According to information at the Commission's disposal, amongst others, the following entities are importers of the product in question:
 - West Africa Group (Pty) Ltd. (the applicant); and
 - Dow Southern Africa (Pty) Ltd
17. The applicant's sales volume of the subject product increased at an average rate of 14% over the three year period of investigation.
18. Import statistics for 2015 and 2016 are not available, owing to the fact that the subject product was previously classifiable under a general tariff subheading, which included other products that did not form part of the investigation. However, in 2017, imports of the subject product were calculated at over 17 000 tons.
19. The applicant's export volume increased from 2015 to 2016 due to the high demand of the subject product in a SADC member country. However, from 2016 to 2017, the export volumes declined by 63%. The export value also increased from 2015 to 2016. However, from 2016 to 2017, the value of exports declined by 68%.
20. According to import trade data in relation to the subject product, imports in 2017 indicated that, Saudi Arabia accounted for the majority of all imports of LLDPE into SACU, followed by Singapore, and the EU.

COMPETITIVE POSITION

21. According to information at the Commission's disposal, the domestic manufacturing industry is experiencing a price advantage *vis-à-vis* foreign manufacturers of the subject product, when the domestic manufacturer's ex-factory selling price of the subject product is compared to the landed cost of a similar imported product.

COMMENTS RECEIVED

22. Solidarity submitted that it fully supports the use of local manufacturing and supply of raw material, but in respect of LLDPE, the exception is that the demand exceeds the supply by local producers, which, in their view, justifies the importation of the short

fall, without prejudicing the local supplier. Solidarity further submitted that the importation of LLDPE at free of duty would, among others, ensure sustainability; provide security of employment, and avoid job losses.

23. Sasol South Africa (Pty), submitted that it remains neutral in its response to the application and therefore cannot support nor oppose the application.
24. Dow Southern Africa (Pty) Ltd, supported the application on the basis that there is no local manufacturer of LLDPE manufactured from an alternative monomer, which is required to produce differentiated packaging that follows norms and specifications required by the industry.
25. PlasticsSA, supported the reduction of duty on LLDPE on the basis that the 10% duty will have a very negative impact on the already strained plastics industry and could lead to more disinvestment, job losses, unfair international competition and the resultant increase in imports.

FINDINGS

26. The Commission considered the application in light of the information at its disposal. In particular the Commission took the following factors into account:
 - The industry manufacturing the subject product is able to meet the full market requirements for the subject product;
 - The price advantage experienced by the local manufacturer *vis-à-vis* foreign manufacturers exporting the subject product to SACU;
 - The significant portion of the imports origination from East-Asia and the Middle-East;
 - Amendment of the tariff structure in 2017 in respect of the tariff subheading in question by SARS in compliance with the World Customs Organisation; and,

- Request for retrospective amendment of customs duty.

27. The Commission found that the subject product was, prior to HS2017, classifiable under tariff subheading 3901.90.90 at a rate of customs duty of 10 per cent *ad valorem*. Since the implementation of HS2017, products classifiable under tariff subheading 3901.90.90 were transposed to tariff subheading 3901.40, which also attracts a 10 per cent *ad valorem* duty.
28. The Commission concluded that the recommended duty structure would enable the domestic downstream industry manufacturing various plastic products using the subject product as an input to be competitive against similar imported end products.
29. The Commission also found, in respect of the request for retrospective amendment of customs duty, that no amendment of customs duty has taken place in relation to the tariff subheading concerned, before or after the amendment of the article description by SARS.
30. ITAC considers recommending a retrospective reduction of customs duties only in exceptional cases because of administrative and fiscal concerns and only in instances where an applicant can point to an action outside its control that has led to it suffering meaningful hardship.
31. The Commission found that no justification exists for the amendment of customs duty in respect of the subject product, with retrospective effect.

RECOMMENDATION

32. In light of the foregoing, the Commission decided that the rate of duty on on ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94, classifiable in tariff subheading 3901.40, be reduced from 10% *ad valorem* to free of duty.