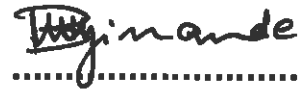


Annexure "A"

REPORT NO. 650

**REVIEW OF THE DESCRIPTION OF REBATE ITEM
304.07/0404.10/01.06 FOR DEMINERALISED WHEY
POWDER USED FOR THE MANUFACTURE OF
PREPARED INFANTS FOOD**

The International Trade Administration Commission of South Africa ("ITAC") herewith presents its Report No. 650: Review of the description of rebate item 304.07/0404.10/01.06 for demineralised whey powder used for the manufacture of prepared infants food.



.....
Meluleki Nzimande

CHIEF COMMISSIONER

PRETORIA

.....17/05/2021

REPUBLIC OF SOUTH AFRICA

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 650

REVIEW OF THE DESCRIPTION OF REBATE ITEM 304.07/0404.10/01.06 FOR DEMINERALISED WHEY POWDER USED FOR THE MANUFACTURE OF PREPARED INFANTS FOOD

Synopsis

The Commission considered a request by the South African Revenue Service ("SARS"). The request was for a review of the description of rebate item 304.07/0404.10/01.06, which makes provision for duty free importation of demineralised whey powder used for the manufacture of prepared infant food.

During its deliberations and arriving at its recommendation, the Commission considered the information at its disposal, including comments received during the investigation and the history of the rebate item under review, especially its usage in the period preceding the review.

The Commission found that:

- Rebate item 304.07/0404.10/01.06 was created during the tenure of ITAC's predecessor, the Board on Tariffs and Trade ("BTT") and provides for duty free importation of DWP used for the manufacture of prepared infant food.
- It was appropriate to review the conditions of rebate item 304.07/0404.10/01.06 and clarify the description of the product which qualifies for importation under this rebate item in so far as the current description is limited to DWP, taking into account the current practices of the infant foodstuffs industry.
- According to SARS, the rebate item is currently contentious due to the lack of clarity as to what constitutes DWP and what the parameters are of its constituents. This has

rendered it increasingly difficult for SARS to administer the rebate item in view of the fact that some local manufacturers of infant food utilise WPC as a substitute for DWP, as WPC has a similar composition to DWP.

- It was found that South Africa only produces whey powder and that all other derivatives, such as DWP and WPC, are imported.
- Imports under Rebate Item 304.07/0404.10/01.06 increased from 2015 to 2016. However, they reduced by 47% in 2017. There were no imports under the rebate facility from 2018 to date.
- The majority of importers of DWP, which is used for the manufacturing of infant food, made use of the EU duty free provision instead of rebate item 304.07/0404.10/01.06, which requires a rebate store under SARS Customs supervision.

In light of the foregoing, the Commission decided to withdraw rebate item 304.07/0404.10/01.06, which makes provision for duty free importation of demineralized whey powder used for the manufacture of prepared infant food.

1. APPLICATION AND TARIFF POSITION

- 1.1. The Commission received a request by the South African Revenue Service ("SARS") to review the description of rebate item 304.07/0404.10/01.06 for demineralised whey powder ("DWP") used for the manufacture of prepared infants food.
- 1.2. SARS requested ITAC to review the conditions of rebate item 304.07/0404.10/01.06 and clarify the description of the product which qualifies for importation under this rebate item is so far as the current description is limited to DWP, taking into account the current practices of the infant foodstuffs industry. As motivation and explanation for its request, SARS mentioned, *inter alia*, that:
 - *In its Report No. 3691 dated 30 September 1997, the then Board on Tariffs and Trade (BTT) recommended amended rates of duty on dairy products of tariff headings 04.01 to 04.06. The revision of the rates of duty applicable to the relevant tariff headings were as a result of applications made by The SA Dairy Foundation and New Zealand Milk Products.*

- In its report, the BTT also recommended that a provision for rebate of the full duty be created for buttermilk powder, classifiable in tariff subheading 0403.90, for the manufacture of ice cream and for demineralised whey powder (DWP), classifiable in tariff subheading 0404.90, for the manufacture of prepared baby food of tariff subheading 2106.10. The reason stated in the report was to ensure that the manufacturing cost of these products does not increase. Rebate item 304.07/0404.10/01.06 was subsequently created and implemented through Notice R. 6 of Government Gazette No.18570 R No. 6 dated 2 January 1998 for:
[Demineralised whey powder, for the manufacture of prepared baby food of subheading No. 2106.10]
- An amendment to the said rebate item was later necessary in order to correctly reflect the tariff classification for DWP as 0404.10 and not 0404.90.
- Goods imported under the rebate in 2017 are significantly more than those imported in 2018 and it seems that imports ceased completely in 2019. This could be an indication that infant food is no longer made locally or that another source of DWP has been found locally.
- The lack of clarity as to what constitutes DWP and what the parameters are of its constituents make the use and the administration of the rebate item difficult. Some local manufacturers of infant food utilise whey protein concentrate ("WPC") as a substitute for DWP and WPC has a similar composition as DWP."

1.3. The review was published in the *Government Gazette* on 21 August 2020 as Notice Number 43632 for a period of 4 weeks for interested parties to comment.

1.4. Table 1 below shows the current tariff structure of products classifiable under tariff subheading 0404.10:

Table 1: Tariff position for the subject product

Tariff Heading	Tariff Subheading	Description	Statistical Unit	Rate of duty						
				General	EU	EFTA	SADC	MERCOSUR	AfCFTA	
04.04		Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included:								
	0404.10	Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter	Kg	450c/kg with a maximum of 96%	Free	450c/kg with a maximum of 96%	Free	450c/kg with a maximum of 96%	450c/kg with a maximum of 96%	450c/kg with a maximum of 96%

Source: SARS

1.5. As shown in Table 2 below, rebate Item 304.07/0404.10/01.06 currently reads as follows:

Table 2: Rebate Item 304.07/0404.10/01.06

Rebate Item	Tariff Subheading	Rebate code	CD	Description	Extent of Rebate
304.07	0404.10	01.06	60	Demineralised whey powder, for the manufacture of prepared infants food	Full Duty

Source: SARS

2. DISCUSSION

- 2.1. According to information at the Commission's disposal, whey is a by-product created during the processing of milk into cheese, casein and yoghurt.
- 2.2. Information furnished to ITAC indicated that milk is produced throughout South Africa on farms primarily situated in the coastal areas of the Western Cape, Eastern Cape and Kwazulu-Natal provinces. The Free State province also has a large number of producers.
- 2.3. Information submitted also indicated that South Africa has over 100 cheese producers ranging from major companies to medium-sized operations that could serve as sources of whey and whey by-products. There are currently five major companies, namely, Parmalat, Clover, Dairy Belle, Ladysmith Cheese and Lancewood, which represent over 50% of the total cheese market in South Africa.
- 2.4. Information submitted confirmed that, in South Africa, industries that drive the demand for whey are those producing baby formula, infant food, sport nutritional supplements and those involved in food processing.
- 2.5. According to information submitted, the sport nutritional supplements and baby formula markets are experiencing robust growth in South Africa as well as globally.
- 2.6. Information submitted further indicated that, to date, South Africa is the only African country that produces whey powder in significant volumes.

- 2.7. According to information at the Commission's disposal, South Africa produces the most basic forms of whey products, which are dictated by its existing technological capability. The technological capability is confined to producing only dry or concentrated whey powder, utilising the spray driers process.
- 2.8. Information submitted indicated that WPC are powders made by drying the derivatives from ultrafiltration of whey. Diafiltration is a process in which water is added to the feed as filtration proceeds, in order to wash out low molecular components, which will pass through the membranes, basically lactose and minerals.
- 2.9. WPC is described in terms of its protein content (percentage protein in dry matter), which according to the Department of Agriculture, Land Reform and Rural Development ("DALRRD") cannot be less than 34% protein and generally ranges between 35% and 80%.
- 2.10. Information submitted also indicated that DWP is also manufactured from whey, which is clarified and defatted (at least 90%) before demineralisation, prior to evaporation and spray drying. The product is fat free and is heat stable. DWP is increasingly being used in various dairy products, including in the production of baby formulas and infant food, owing to the presence of high amounts of proteins, mineral salts as well as lactose. In addition, it is being increasingly used in various bakery products that are high in protein content in order to make the otherwise high-carb food healthier.
- 2.11. Import statistics for the period 2015 to 2020 showed that imports under rebate item 304.07/0404.10/01.06 increased from 2015 to 2016. Imports declined by 47% in 2017.
- 2.12. According to information at the Commission's disposal, there were no imports under rebate item 304.07/0404.10/01.06 in 2018 and 2019. Reasons for non-usage were solicited from known stakeholders but no response was received.
- 2.13. Comments in support of the review were received from, *inter alia*, the South African Milk Processors Organisation ("SAMPRO"), Pharmaco Distribution (Pty) Ltd and the Milk Producers' Organisation ("MPO") who were in support of the rebate provision being

amended to include DWP, WPC and whey powder isolate for the manufacturing of infants foods.

3. FINDINGS

3.1 During its deliberations and arriving at its recommendation, the Commission considered the information at its disposal, including comments received during the investigation and the history of the rebate item under review, especially its usage in the period preceding the review. The Commission found that:

- Rebate item 304.07/0404.10/01.06 was created during the tenure of ITAC's predecessor, the Board on Tariffs and Trade ("BTT") and provides for duty free importation of DWP used for the manufacture of prepared infant food.
- It was appropriate to review the conditions of rebate item 304.07/0404.10/01.06 and clarify the limitation to DWP, taking into account the current practices of the infant foodstuffs industry.
- According to SARS, the rebate item is currently contentious due to the lack of clarity as to what constitutes DWP and what the parameters are of its constituents. This has rendered it increasingly difficult for SARS to administer the rebate item in view of the fact that some local manufacturers of infant food utilise WPC as a substitute for DWP, as WPC has a similar composition to DWP.
- It was found that South Africa only produces whey powder and that all other derivatives, such as DWP and WPC, are imported.
- Imports under Rebate Item 304.07/0404.10/01.06 increased from 2015 to 2016. However, they reduced by 47% in 2017. There were no imports under the rebate facility from 2018 to date.
- The majority of importers of DWP, which is used for the manufacturing of infant food, made use of the EU duty free provision instead of rebate item 304.07/0404.10/01.06, which requires a rebate store under SARS Customs supervision.

4. RECOMMENDATION

4.1. In light of the foregoing, the Commission decided to withdraw rebate item 304.07/0404.10/01.06, which makes provision for duty free importation of DWP used for the manufacture of prepared infant food.