

Report No. 144

Revision of the customs duty on sugar confectionery not containing cocoa classifiable under tariff subheading 1704.90

The International Trade Administration Commission of South Africa herewith presents
**Report No. 144: REVISION OF THE CUSTOMS DUTY ON SUGAR
CONFECTIONERY NOT CONTAINING COCOA CLASSIFIABLE UNDER TARIFF
SUBHEADING 1704.90.**


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Ms N P MAIMELA
CHIEF COMMISSIONER

PRETORIA
...20.../...18.../ 2005

REPUBLIC OF SOUTH AFRICA

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 144

REVISION OF THE CUSTOMS DUTY ON SUGAR CONFECTIONERY NOT CONTAINING COCOA CLASSIFIABLE UNDER TARIFF SUBHEADING 1704.90.

Synopsis

The Commission considered an application for a revision of the customs duty on sugar confectionery (including white chocolate) not containing cocoa, classifiable under tariff subheading 1704.90. The application specifically entails a request for an additional specific duty of 180 cents per kilogram. The existing duty on sugar confectionery is 25 per cent ad valorem

The reason for the application was that the SACU sugar confectionery industry, according to the applicant, is in a precarious situation as a result of a surge in imports at very low prices. The applicant further highlighted that the major producers of sugar confectionery were in the process of downsizing due to negative returns. This situation consequently resulted in the liquidation of at least five manufacturers over the past twelve months.

The Commission took cognisance of the surge of imports of sugar confectionery.

However, the Commission could not support the industry's request for an additional specific duty of 180c/kg, but did recommend a more moderate increase in duty.

The requested specific duty would not have affected the higher quality and higher priced confectionery imported mainly from Europe, which would still have been dutiable at 25% ad valorem but would have had a severe impact on the lower priced confectionery imported from developing countries such as Brazil and Thailand. The Commission found that the requested duty of 180c/kg, depending on prevailing price levels and exchange rates, could rise to excessive levels against developing countries and much higher than the WTO bound rate. The Commission regards the requested specific duty not to be transparent and therefore inappropriate.

The Commission found that the customs valuation authorities of SARS could best address the allegations of under-invoicing and that the customs tariff is not the appropriate instrument to counteract this practice.

In the light of the difficulties experienced by the industry against fierce competition and high imports, especially from Brazil, the Commission found that there was

adequate justification for an increase in the general rate of duty to the WTO bound rate of 37% ad valorem. This duty would not affect the higher priced imports from a number of European countries as products from these countries can be imported at preferential rates in terms of trade agreements.

The application

The South African Chocolate and Sweet Manufacturers Association (SACSMA), hereon referred to as the applicant, applied for a revision of the customs duty on sugar confectionery (including white chocolate) not containing cocoa, classifiable under tariff subheading 1704.90. The application specifically entails a request for introducing an additional specific duty equivalence of 180 cents per kilogram. The existing duty on sugar confectionery is 25 per cent ad valorem.

The application was published in the *Government Gazette* on 18 February 2005.

As reason for the application, SACSMA stated that the SACU sugar confectionery industry is in a precarious situation as a result of a surge in imports at very low prices. These low prices are detrimental to the domestic manufacturing base, which, according to the applicant, is likely to be destroyed if action is not taken urgently. The applicant further highlighted that the major producers of sugar confectionery were in the process of downsizing due to negative returns experienced. This situation consequently resulted in the liquidation of at least five manufacturers over the past twelve months.

SACSMA concluded that the requested duty structure will ensure effective tariff support for the SACU sugar confectionery industry by compensating for input cost disadvantages suffered by the industry as well as countering low priced imports. The applicant added that the addition of a specific duty to the existing structure would prevent under-invoicing and would, according to the applicant, assist in levelling the playing field.

Tariff position

The existing tariff dispensation in respect of item 1704.90 is as follows:

Table 1: Tariff Position

Tariff Heading	Tariff Sub-Heading	Article Description	Rates of Duty		
			General	EU	SADC
17.04		Sugar Confectionery (Including White Chocolate) Not Containing Cocoa:			
	1704.10	-- Chewing gum, whether or not sugar-coated	25%	25%	free
	1704.90	-- Other	25%	25%	free

The industry and the market

The local sugar confectionery industry is well established and characterised by the participation of local subsidiaries of major international confectionery companies. As such, these South African producers have access to international brands, technology know-how and support systems. However, there are many small and medium-sized enterprises that have excellent products and supply niche markets both locally and internationally. Because of their structure and entrepreneurial ownership, these companies are generally cost competitive and flexible to adapt to market requirements.

The applicant employed a total of 5 405 workers as at May 2004, which included factory and administrative workers, clerical, marketing, sales and other personnel. Of the total number of direct employees, 2 244 were employed as factory workers of which 1 301 were classified as skilled, 680 as semi skilled and 263 as unskilled. The applicant indicated that the entire confectionery industry, including non-applicants, employed a total of 6 850 people. SACSMA also mentioned that a survey conducted amongst its members during March 2004 revealed that job losses in the sugar confectionery sector over the past two years amounted to 28% - a decline in the total number of industry employees from 9 500 to 6 850.

SACSMA reported that a large number of manufacturers have over the past 18 to 20 months scaled down production, reduced the size of the workforce or even shut down the operation completely. According to the applicant, Tiger Brands confectionery laid off 350 workers in 2004 and a total of five confectionery companies (American Candy, Lesters Candy, Mouthful Sweets, Classic Candies and Swan Sweets) were liquidated since October 2003. The production loss from the liquidation of these companies amounted to 7 500 tons, with a resultant 400 job losses.

The industry is a significant user of local packaging material in the form of plastic films and laminates, wax and label paper, paperboard and corrugated containers. The confectionery market is the most significant and considered a high value for the local packaging industry. This is also evidenced by a significant expenditure on raw material and packaging material. The applicant stated that most of the services and inputs used in the sugar confectionery are sourced locally. These services and inputs include sugar, colourants, flavourants, sales and marketing as well as distribution. The raw material and the packaging material sourced locally encompass 57% of the total production cost. However growth in local production has dropped significantly in the last eighteen months due to the influx of imported confectionery.

Objections were received from Delport Ward and Pienaar Attorneys, acting for J Melnick & Company (Pty) Limited (t/a JMC (Pty) Ltd), a manufacturer of sugar confectionery. This manufacturer commented that the revision would result in an increase, which is against liberalisation of international trade.

Findings

The Commission took cognisance of the surge of cheap imports of sugar confectionery mostly from developing countries. Relatively moderate quantities of sugar confectionery are imported mostly from the European Union and attract the duty of 25% ad valorem.

The Commission could not support the industry's request for an additional duty of 180c/kg. It considered a more moderate increase in the duty.

The requested duty would not have affected the higher quality and higher priced confectionery imported mainly from Europe, which would still have been dutiable at 25% ad valorem but would have had a severe impact on the lower priced confectionery imported from developing countries such as Brazil and Thailand. The Commission found that the requested duty of 180c/kg, depending on prevailing price levels and exchange rates, could rise to excessive levels against developing countries and much higher than the WTO bound rate. The Commission regards the requested specific duty not to be transparent and therefore inappropriate.

The Commission found that customs valuation authorities of SARS could best address the allegations of under-invoicing and that the customs tariff is not the appropriate instrument to counteract this practice.

In the light of the difficulties experienced by the industry against fierce competition and high imports especially from Brazil, the Commission found that there was adequate justification for an increase in the general rate of duty to the WTO bound rate of 37% ad valorem. This duty would not affect the higher priced imports from a number of European countries as products from these countries are imported at preferential rates in terms of trade agreements.

Recommendation

The Commission therefore decided to recommend that the customs duty on sugar confectionery not containing cocoa classifiable under tariff subheading 1704.90 be increased from 25% ad valorem to 37% ad valorem.