

Report No. 260

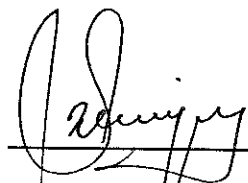
**WITHDRAWAL OF THE ANTI-DUMPING DUTIES ON UNCOATED
WOODFREE WHITE A4 PAPER ORIGINATING IN OR IMPORTED
FROM BRAZIL AND INDONESIA.**

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FAIR TRADE

The International Trade Administration Commission herewith presents its Report
No. 260: **WITHDRAWAL OF THE ANTI-DUMPING DUTIES ON UNCOATED
WOODFREE WHITE A4 PAPER ORIGINATING IN OR IMPORTED FROM
BRAZIL AND INDONESIA.**



Siyabulela Tsengiwe
CHIEF COMMISSIONER

PRETORIA
28 / 01 / 2008

WITHDRAWAL OF THE ANTI-DUMPING DUTIES ON UNCOATED WOODFREE WHITE A4 PAPER ORIGINATING IN OR IMPORTED FROM BRAZIL AND INDONESIA

1. Anti-dumping duties on A4 paper imported from Brazil and Indonesia were imposed by the South African Revenue Service (SARS), at the recommendation of the previous Board of Tariffs and Trade, in terms of Notice No. 685 in Government Gazette 20125, dated 28th May 1999.
2. On 20 June 2003, the International Trade Administration Commission (Commission) notified the SACU industry through Notice No. 1560 in Government Gazette No. 24893, that unless a substantiated request is made by it indicating that the expiry of the duties on uncoated woodfree white A4 paper originating in or imported from Brazil and Indonesia would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on uncoated woodfree white A4 paper originating in or imported from Brazil and Indonesia, would expire on 25 May 2004.
3. After receiving an application from the SACU producers of A4 paper, namely SAPPI Ltd and Mondi (Pty) Ltd, the Commission formally initiated a review of the anti-dumping duties on uncoated woodfree white A4 paper originating in or imported from Brazil and Indonesia pursuant to Notice No. 552, which was published in *Government Gazette* No. 26180 on 2 April 2004.
4. The information submitted by the exporters of the subject product was verified from 10 July 2004 to 31 July 2004.
5. On 22 September 2004, after careful consideration of the information available, the Commission made a preliminary determination that the anti-dumping duties against Indonesia be terminated and that the anti-dumping duties against Brazil be maintained.
6. Interested parties were informed by letter of the essential facts that the Commission took into account in making its preliminary determination and were invited to comment

thereon prior to the Commission making its final determination. The deadline for comments was 1 December 2004. The applicants requested extension to provide comments.

7. On 12 December 2004, the applicants applied to the High Court for access to the exporters' information.
8. The applicants further applied for mediation which took place on 3 May 2005, and was attended by representatives of the exporters. This was successfully finalised on 14 June 2005.
9. The applicants provided comments on the essential facts on 1 July 2005.
10. On 27 July 2005, the Commission considered all the comments received from interested parties in response to the "essential facts" letters and made a final determination that:
 - i) The expiry of the duty is not likely to lead to continuation or recurrence of dumping of uncoated woodfree A4 paper exported from Indonesia; and
 - ii) The expiry of the duty is likely to lead to continuation or recurrence of dumping of uncoated woodfree A4 paper exported from Brazil, and is likely to lead to material injury to the SACU industry.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the anti-dumping duties against Indonesia be terminated, and the existing anti-dumping duties against Brazil be amended as follows:

Tariff subheading	Description	Imported from or originating in	Duty
4802.56	Uncoated paper and paperboard, woodfree, of a kind used for writing, printing or other graphic purposes, of a mass of 46g/m ² or more but not exceeding 80g/m ² , white and of a size commonly known as A4, exported by Ripasa Celulose E Papel.	Brazil	14.1%
	Uncoated paper and paperboard, woodfree, of a kind used for writing, printing or other graphic purposes, of a mass of 46g/m ² or more but not exceeding 80g/m ² , white and of a size commonly known as A4, exported by International Paper	Brazil	6.3%
	Uncoated paper and paperboard, woodfree, of a kind used for writing, printing or other graphic purposes, of a mass of 46g/m² or more but not exceeding 80g/m², white and of a size commonly known as A4, (excluding that exported by Ripasa Celulose e Papel and International Paper)	Brazil	36.8%

11. However, during January 2005, the SACU producers obtained an interdict preventing the Minister of Trade and Industry from approving the final recommendation subject to a Judicial Review application to be brought before the High Court in terms of section 64 of the Anti-Dumping Regulations. The review application has been set down for hearing during April 2008. The effect of this action was that the existing anti-dumping duties remained in place including those against Indonesia, and were not amended as recommended.
12. A second legal action was instituted by an importer, namely Progress Office Machines. During the period 8 January 2004 to 20 September 2004, Progress Office Machines imported, through the Port of Durban, twenty six containers of A4 paper from Indonesia consisting of four consignments. When these consignments were cleared, no anti-dumping duties were paid.
13. On 26 October 2004, SARS addressed a letter to Progress Office Machines in which it advised the latter that it had conducted an investigation into the clearance of the consignments of A4 paper that had been imported by Progress Office Machines; that the imported paper was classifiable under tariff subheading 4802.56.20; that, *prima facie*, Progress Office Machines was liable for anti-dumping duties in the sum of R1 565 569.60; and that Progress Office Machines had seven days to make representations to SARS.
14. Progress Office Machines denied that it was liable for anti-dumping duties on the consignments. The essence of Progress Office Machines contentions were:
 - i) On 28 May 1999 the definitive anti-dumping duties in respect of A4 paper imported from Indonesia were imposed with retrospective effect to 27 November 1998;

- ii) The five year period referred to in article 11 of the Anti-Dumping Agreement and in Regulation 53.1 of the Anti-dumping Regulations expired on 27 November 2003, unless a sunset review was initiated prior to 27 November 2003; and
 - iii) A sunset review was only initiated on 2 April 2004, that is after the lapse of the five year period
15. Progress Office Machines appealed against the dismissal by the court *a quo* of its application, initially brought on an urgent basis, for a declaratory order that the anti-dumping duties imposed in terms of Government Notice No R685 in Government Gazette 20125 dated 28 May 1999 in respect of paper products and in particular A4 paper imported from Singapore, had no force and effect after 27 November 2003.
16. The principal issue in the appeal, which was also the principal issue in the court *a quo*, was how the five year period during which such anti-dumping duties were payable, is to be calculated. Progress Office Machines and ITAC argued for different commencement dates for this five year period. Progress Office Machines argued that the five year period commenced on 27 November 1998, while ITAC argued that the commencement date was 28 May 1999.
17. Ruling in favour of Progress Office Machines, the Supreme Court of Appeal found that the strongest indication for holding that the duty was “imposed” on 27 November 1998 is to be found in section 57A(3) of the Customs and Excise Act which leaves no doubt that the duty imposed is a definitive anti- dumping duty for the payment of which any provisional payment already imposed serves as security. The court further found that the anti-dumping duty was fully effective on 27 November 1998 just as if it had been imposed on that very day.

18. On 26 September 2007 the Supreme Court of Appeal gave the following order:

"The anti-dumping duty imposed by the Fourth Respondent in terms of GNR685, Government Gazette 20125 (dated 28th May 1999) in respect of paper products and in particular A4 paper imported from Singapore, had no force and effect on 27th November 2003."

19. In light of the court order given on 26 September 2007, the anti-dumping duties in respect of A4 paper imposed in terms of Notice 20125 published in the Government Gazette on 28 May 1999 may not be levied as of 27 November 2003.

RECOMMENDATION

20. In the light of the order given by the Supreme Court of Appeal, the Commission recommends that the anti-dumping duties on uncoated woodfree white A4 paper be terminated from 27 November 2003.