

Report No. 195

Sunset review of the anti-dumping duties on frozen meat of fowls of the species *Gallus Domesticus* cut in pieces with bone-in originating in or imported from the United States of America

The International Trade Administration Commission of South Africa
herewith presents its Report No. 195: SUNSET REVIEW OF ANTI-
DUMPING DUTIES ON FROZEN MEAT OF FOWLS OF THE SPECIES
GALLUS DOMESTICUS CUT IN PIECES WITH BONE-IN ORIGINATING IN
OR IMPORTED FROM THE UNITED STATES OF AMERICA



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APPLICATION AND PROCEDURE

- 1.1 This investigation was conducted in accordance with the International Trade Administration Commission Act, 2002, (the ITA Act), the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement) and the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR).
- 1.2 On 28 May 2004, the Commission notified the SACU industry through Notice No. 947 in Government Gazette No. 26374, that unless a substantiated request is made by it indicating that the expiry of the anti-dumping duties on the subject product originating in or imported from the USA would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on the subject product originating in or imported from the USA will expire on 27 December 2005.
- 1.3 A response to the sunset review application questionnaire was received from the Applicant on 25 May 2005. The Southern African Poultry Association (SAPA) (the Applicant), being the representative organisation, lodged the application on behalf of the Southern African Customs Union (SACU) industry.
- 1.4 The investigation was initiated through Notice No. 1737 in *Government Gazette* No. 28011 on 16 September 2005. Exporters and importers review questionnaires were sent to various known interested parties.
- 1.5 Information submitted by the two major producers, Earlybird and Rainbow, was verified.
- 1.6 The investigation period for dumping was from 01 January 2004 to 31 December 2004. The injury investigation involved evaluation of data for

the period October 2000 to September 2005 for Earlybird and April 2000 to March 2005 for Rainbow. An estimate for 2005 of what the situation would be if the duties expire was also submitted.

- 1.7 On 22 February 2006, the Commission made a preliminary determination that although the expiry of the anti-dumping duties would likely lead to the recurrence of dumping from the USA, the expiry of the anti-dumping duties would not likely lead to the recurrence of material injury to the SACU industry. It was considered that the SACU industry is in a healthy state notwithstanding the presence in the market of low cost imports from Brazil.
- 1.8 Essential facts letters were sent to interested parties on 02 March 2006, notifying them of the Commission's determination. Comments on behalf of the importers were received from Consulting Services (Pty) Ltd (CLS) and South African Tariff & Trade Solutions (SATTs) both parties concurring with the Commission's determination.
- 1.9 International Trade Services (ITS), acting on behalf of the Applicant, responded indicating that the Commission's decision was based on "incorrect information".

In its response to the Commission's preliminary finding (ITS) on behalf of the Applicant provided pricing information for the Commission to consider. This information indicated that the prices at which leg quarters are available will enable imports from the USA to substantially undercut both the SACU product and Brazilian imports. It was therefore considered likely that should the duty be removed, that material injury will recur. As the American exporters did not provide any pricing information, the Commission had to base its finding on the best available information.

On 27 June 2006 The Commission conveyed its decision to interested parties by way of a letter of essential facts allowing parties seven days to respond.

After considering all parties' comments in respect of the "essential facts" letter the Commission made a final determination that the expiry of the duty is likely to lead to recurrence of dumping and material injury.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the existing duties on frozen meat of fowls of the species *gallus domesticus* cut in pieces with bone-in originating in or imported from the United States of America, be maintained.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as frozen meat of fowls of the species *Gallus Domesticus*, cut in pieces with bone-in.

2.1.2 Country of origin/export

The subject product originates in the United States of America.

2.1.3 Possible tariff loopholes

This information was not provided.

2.1.4 Other applicable duties and rebates

The subject product is subject to the following anti-dumping duties:

Table 2.1.4 Anti-dumping duties

| Tariff subheading | Description | Originating in or imported from | Anti-dumping duty |
|-------------------|---|---------------------------------|-------------------|
| 0207.14 | Frozen meat of fowls of the species <i>Gallus domesticus</i> , cut in pieces with bone-in, manufactured by Tyson Foods Incorporated | USA | 224c/kg |
| 0207.14 | Frozen meat of fowls of the species <i>Gallus domesticus</i> , cut in pieces with bone-in, | USA | 245c/kg |

| | | | |
|---------|--|-----|---------|
| | manufactured by Gold Kist Incorporated | | |
| 0207.14 | Frozen meat of fowls of the species <i>Gallus domesticus</i> , cut in pieces with bone-in (excluding that manufactured by Tyson Foods Incorporated and Gold Kist Incorporated) | USA | 696c/kg |

The table below indicates other applicable duties:

| Tariff subheading | Description | Statistical Unit | Rates of Duty | | |
|-------------------|---|------------------|---------------|---------|------|
| | | | General | EU | SADC |
| 0207 | Meat and edible offal, of the poultry heading No. 01.05, Fresh, Chilled or Frozen | | | | |
| 0207.14 | | | | | |
| 0207.14.05 | Cuts and offal, frozen: | Kg | Free | Free | Free |
| 0207.14.10 | - Boneless (excluding | Kg | 5% | 5% | Free |
| 0207.14.20 | cuts) | Kg | 27% | 27% | Free |
| 0207.14.90 | - Boneless cuts | Kg | 220c/kg | 220c/kg | Free |

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as:

Frozen meat of fowls of the species *Gallus Domesticus*, cut in pieces with bone-in.

2.3 LIKE PRODUCTS ANALYSIS

In determining the likeness of products, the Commission used the following criteria:

Table 2.3: Like product determination

| | Imported product | SACU product |
|-------------------------------|--------------------------------|--------------------------------|
| Raw materials | Day old chickens | Day old chickens |
| Physical appearance | same | same |
| Tariff classification | Same tariff subheading 0207.14 | Same tariff subheading 0207.14 |
| Production process | Same production process | Same production process |
| Application or end use | Foodstuff | Foodstuff |
| Substitutability | Are direct substitutes | Are direct substitutes |

After considering all the above factors and the comments received, the Commission was satisfied that the SACU product and the imported product were “like products” for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. INDUSTRY STANDING

Based on the information supplied by the Applicant, the application is supported by 94.6 per cent of the SACU industry. It was evident that the application was supported by domestic producers whose collective output constitutes more than 25 per cent of the total production of the like products produced by the domestic industry and more than 50 per cent of the total production of the like products produced by those expressing an opinion on the application.

Based on the above, the Commission made a final determination that the application was made by or on behalf of the domestic industry.

4. DUMPING

4.1 METHODOLOGY IN THIS INVESTIGATION FOR THE USA

Type of economy

The United States of America is considered to be a country with a free market economy and therefore the definition of section 32(2) of the ITA Act applies.

4.1.1 Normal Value

The Commission applied Article 2.2 of the Anti-Dumping Agreement, and considered that as there are no sales of the like product in the ordinary course of trade in the exporting country as a result of a particular market situation, a cost build-up could be done to calculate the normal value.

The then Board on Tariffs and Trade made a determination in the original investigation that the sales of leg quarters in the USA were not made in the ordinary course of trade and therefore based its final determination on the cost of production methodology. It is still a known feature of the American market that there is an increasing preference for white poultry meat over dark poultry meat and that the wings and legs of USA poultry are exported. As a result of this preference the white meat is sold in the USA at a significant premium above those of brown meat.

The Commission decided, based on the same principles as in the initial investigation, to construct the normal value. The price per kilogram to produce a broiler in the USA was used as the basis for the cost build-up.

The cut-up value and profit margin were added to construct the normal ex-factory value of a bone-in portion. The profit margins for the products were obtained from published reports by Tyson Foods and Gold Kist Inc. The average margin for the two companies was calculated to be 9.05% for 2005.

The Application indicated that the cut-up costs, known also as further processing, was estimated to be 13% in the original application of the total cost of the final product. This was as a result of a benchmark exercise done by an independent party at that stage. The Applicant stated that in a recent survey done by it, the cut-up cost was estimated to be between 7% and 23%. The Applicant therefore decided that the 13% as used in the original application be retained.

The normal value was calculated as follows:

Table 4.1.1.1: Normal value calculation

| | |
|--|----------|
| USDA publication - R/kg | 10.66 |
| Exchange rate | 6.401639 |
| US Broiler price (\$/kg) | 1.665 |
| US Broiler price less profit margin (9.05%) | 1.495 |
| Plus: Cut-up cost (13%) | 1.689 |
| Profit margin (9.05%) | 0.170 |
| Normal value- US portion constructed value (\$/kg) | 1.860 |

4.1.2 Export price

Calculation of export price

The export price was calculated from the official SARS import statistics for the 2004 calendar year. An adjustment for inland freight was made to the FOB price of the import statistics to determine the

ex-factory export price from the USA.

The export price was calculated as follows:

| | |
|--|----------|
| FOB value per kg | R 4.16 |
| Exchange rate R1 = \$ 0.15621 (Average exchange rate for Jan – Dec 2004) | |
| FOB value per kg | \$ 0.650 |
| Adjustment for inland freight | \$ 0.001 |
| Ex-factory price per kg | \$ 0.649 |

4.1.3 Margin of dumping

The dumping margin was calculated using the normal value in the USA (US Dollar/Kilogram) and export price to the SACU market (US Dollar/Kilogram).

Table 4.1.3: Dumping margin calculation

| | |
|---|-------|
| Normal value | 1.86 |
| Export price | 0.649 |
| Margin of dumping | 1.210 |
| Margin of dumping expressed as a percentage of the export price | 186% |

4.2 CONCLUSION – DUMPING

The Commission considered all comments regarding “dumping” and these comments are available on the public file.

For the purposes of its final determination the Commission considered all the comments from interested parties and found that the expiry of the duty is likely to lead to recurrence of dumping.

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to the Applicant and is based on the information as supplied by Earlybird and Rainbow. These two firms constitutes 94 per cent of the total domestic production of the subject product.

The Commission decided that this constitutes “a major proportion” of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement.

5.2 CUMULATIVE ASSESSMENT

As only imports from the USA were investigated, cumulative assessment does not apply.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

There were no imports of the subject product from the USA after the imposition of the anti-dumping duties.

5.4 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE INDUSTRY

| Variable | Unit of Measurement | Year | | | | Estimate if duty expires |
|--|---------------------|------|------|------|------|--------------------------|
| | | 2002 | 2003 | 2004 | 2005 | |
| Sales: | Kg | 100 | 109 | 117 | 123 | 123 |
| In value terms | R'000 | 100 | 119 | 127 | 139 | 112 |
| Inventories (quantities) | Kg | 100 | 261 | 283 | 280 | 0 |
| Output (quantities) | Kg | 100 | 112 | 121 | 129 | 0 |
| Market share of Applicant | Percentage | 100 | 109 | 117 | 123 | 0 |
| Market share of alleged dumped imports | Percentage | | | | | 100 |
| Market share of other imports | Percentage | 100 | 286 | 293 | 293 | 293 |
| Capacity utilization | | 100 | 106 | 112 | 113 | 108 |
| Employment | | 100 | 97 | 93 | 93 | 92 |
| Wages per production employee | R | 100 | 131 | 144 | 154 | 154 |
| Productivity (output/worker) | Units per worker | 100 | 116 | 132 | 132 | 0 |

| Variable | Unit of Measurement | Year | | | | Estimate if duty expires |
|--|---------------------|------------|------------|------------|------------|--------------------------|
| | | 2002 | 2003 | 2004 | 2005 | |
| Profit | % of selling price | 100 | 85 | 110 | 114 | 0 |
| Return on investment | | 100 | 142 | 84 | 88 | 33 |
| Ability to raise capital (capital expenditure) | | Favourable | Favourable | Favourable | Favourable | Unfavourable |
| Growth of Applicant | | 100 | 120 | 127 | 133 | 133 |
| Magnitude of the margin of dumping | | 186% | | | | |

The information in these tables was indexed due to confidentiality using 2002 as the base year.

5.5 CONCLUSION - MATERIAL INJURY

The Commission considered all comments regarding “material injury” and these comments are available on the public file.

The Commission made a final determination that the expiry of the duties is likely to lead to recurrence of material injury.

6. FINAL DETERMINATION

The Commission made a final determination that the expiry of the duty would be likely to lead to the recurrence of dumping and material injury.

The Commission, therefore, made a final decision to recommend to the Minister of Trade and Industry that the following anti dumping duties remain in place:

| Tariff subheading | Description | Originating in or imported from | Anti-dumping duty |
|-------------------|--|---------------------------------|-------------------|
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