

# ATTACHMENT A: ISSUES PAPER

## Background

Australia can take anti-dumping action when goods are exported to Australia at dumped prices and because of that, injury is caused (or threatened) to an Australian industry producing like goods.

The identification of 'like goods' is fundamental to an anti-dumping investigation. Australian legislation (section 269T of the *Customs Act 1901*) defines "like goods", in relation to goods under consideration, as meaning:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Where there is Australian production of like goods, the Australian industry is defined in terms of that production. The identification of like goods also affects decisions relating to injury assessment, and the scope of any measures that may be imposed.

Interested parties have expressed different views about whether the imported SMBS from China and Thailand is alike to the SMBS produced by the Australian industry (Incitec). Before making its conclusions on this issue, and to ensure all views are properly considered, Customs invites submissions from all interested parties.

## The goods

The imported goods were described in the application as sodium metabisulfite packaged in both bulk bags (1 tonne or more) and 25kg bags. The goods are classified to subheading 2832.10.00, statistical code 25 of the *Customs Tariff (Anti-Dumping) Act 1975* with a free rate of duty. Other chemicals in this code include sodium sulfite and sodium hydrosulfite.

The application advised that the Australian industry manufactures like goods, that is, solid SMBS and liquid SMBS (known as sodium bisulfite, or SBS).

## Production and use of SMBS

SMBS is produced by reacting a slurry of dense soda ash, or caustic soda, with a gas stream of sulfur dioxide. The resulting material is centrifuged to remove most of the moisture from the material, and then transferred to a dryer where all remaining moisture is removed. The final product is SMBS in fine white powder form. SBS (liquid SMBS) produced by Incitec is transferred by pipe from the reactor to a storage tank prior to the centrifuge stage. It contains a 34-36 percent concentration of SMBS. SBS can also be produced by dissolving solid SMBS in water.

SMBS is used as a source of sulfur dioxide in a range of industries. Some of its industrial uses include:

- cyanide destruction at gold mines;
- a flotation agent in copper and zinc mines;
- a reducing agent in nickel mines;
- an antioxidant in food and beverage manufacturing;
- a preservative in tanning; and
- a stabiliser and antioxidant in film developer.

### The like goods issue

Incitec identified three grades of SMBS distinguished by factors such as the level of purity (some impurities such as iron can be deposited from the production and handling equipment) and concentration of sulfur dioxide:

- photographic grade, which has the highest product concentration and the lowest level of metal and chloride impurities—SMBS for photographic use is said to have a higher product concentration, which results in higher concentrations of sulfur dioxide when used, and lower chloride and metal levels;
- food grade, which can have higher chloride and metal levels, but is subject to a standard for food grade SMBS; and
- technical grade, which can be of a lower purity.

Technical grade is used mainly by the mining industry; food grade by food and beverage producers; and photographic grade by the photographic industry.

SMBS is imported from China and Thailand in solid form. It is used either in solid form, or dissolved in water prior to use (particularly for mining applications).

The grades and forms of SMBS produced by Incitec and SMBS imported from China and Thailand during the investigation period are summarised in the following table.

	Technical grade SMBS	Food grade SMBS	Photographic grade SMBS	SBS
Produced by Incitec	✓	✓	x	✓
Imported from China	✓	✓	x	x
Imported from Thailand	✓*	✓	✓	x

**\*Note: The Department of Foreign Trade in Thailand claims the technical grade exported to Australia by Thai Sulphites is suitable only for use in the mining industry, and is not a like good to SMBS made to other specifications (see Attachment B).**

Customs must identify which of the locally produced forms of SMBS are like goods to SMBS exported from China and Thailand. This issue will be relevant to Customs' assessment of injury sustained by Incitec.

## **Incitec's claims**

### **SMBS (solid)**

Incitec considers photographic, food and technical grade SMBS to be the subject of its application.

Incitec aims to produce one grade of SMBS – food grade. The food grade product is tested for metal content prior to bagging. If production fails to meet the food grade standard it is sold as technical grade SMBS.

In a recent submission on like goods Incitec stated that:

SMBS can be produced from either caustic soda or soda ash. The appropriate manufacturing process has more to do with the ready availability of the raw material caustic soda or soda ash, than the performance requirements of the finished SMBS. All SMBS is classified under the same tariff sub-heading and, given the quality prerequisites, SMBS grades are substitutable (with the exception of the higher purity photographic grade SMBS).

On this basis SMBS sold as a regular technical grade product (ie. including food grade) is a 'like good' to SMBS technical grade used in the mining industry.

### **SBS (liquid)**

Incitec expressly included SBS in the like goods section of its application, stating that:

SMBS is sold by Incitec in both solid and liquid (known as sodium bisulphite solution) form.

The manufacturing process outlined above indicates that the chemical reaction for SMBS in solid and liquid form is the same.

The predominant reason why most SMBS is sold in solid form is due to distances between Incitec and its customers (it is not economic to transport SMBS liquid long distances). Furthermore, customers in receipt of solid SMBS will combine (or mix) SMBS with water to satisfy their specific requirements.

It is known that at least one importer of SMBS in Australia is importing solid SMBS, mixing it with water, and on-selling it as SBS.

### **Raw material inputs**

Incitec produces SMBS using soda ash. Incitec believes soda ash is used to manufacture SMBS in China, and caustic soda is used to manufacture SMBS in Thailand.

Incitec states it has the capacity to produce photographic grade SMBS with access to appropriate raw materials.

## **Customs' approach**

For practical reasons, when considering whether goods are 'like', Customs does not assign 'identical' its literal meaning. In an extreme situation this could lead to an unrealistic outcome where, for example, a simple colour change would make otherwise identical goods not 'like goods'. Customs instead views 'identical' as meaning 'having the same essential characteristics'. Where identical goods are not produced the definition of 'like' extends to goods that have characteristics closely resembling those of the goods under investigation.

Customs looks at a number of factors when considering whether goods are 'like'. No single factor is, of itself, sufficient to resolve the like goods question.

You are invited to comment on whether you consider the various forms of SMBS produced by Incitec (technical grade, food grade and SBS) are like goods to SMBS imported from China and Thailand. Please address your comments under each of the factors set out in the following framework for analysis, where you consider that factor to be relevant.

### **Framework for analysis**

#### **(1) Physical characteristics**

When looking at the physical characteristics of goods Customs may have regard to matters such as, but not restricted to:

- production process;
- chemical composition (e.g. specifications such as active ingredient content, impurity content, raw material inputs);
- quality (e.g. appearance, performance, purity); and
- tariff classification.

#### **(2) Other factors**

When physical characteristics are not sufficient to determine the question, Customs may have regard to matters such as, but not restricted to:

- distribution channels (e.g. the way goods are sold: through distributors, direct to end-users; packaging);
- customer perceptions (e.g. what customers perceive about the quality or appropriate end use of the different products);
- end use (e.g. which products are usually used for a particular application, or are considered most appropriate for that application);
- substitutability (e.g. whether the different products can be substituted for use in a particular application); and
- price (e.g. whether the different products are generally distinguishable based on their price range).

You are also invited to comment on what factors you believe are important for customers in selecting a supplier of SMBS. For example:

- price;
- range of products offered (in addition to SMBS);
- quality of the product;
- reliability of supply;
- relationship with supplier (e.g. incumbent supplier, local supplier).

## **ATTACHMENT B: COMMENTS BY INTERESTED PARTIES**

### **Exporters**

The Department of Foreign Trade (DFT) in Thailand lodged a submission concerning SMBS produced by Thai Sulphites and Chemicals Co., Ltd (Thai Sulphites), an exporter of SMBS. The DFT stated in its submission that:

- Thai Sulphites manufactures photographic, food and technical grade, whereas Incitec does not produce photographic grade—therefore photographic grade should be excluded from the investigation; and
- the technical grade SMBS that Thai Sulphites sells to Australia is suitable only for use in the mining industry, and is not a like good to SMBS made to other specifications.

### **Importers and end-users**

Customs has visited importers and end-users of SMBS in Australia during the investigation. Non-confidential versions of Customs' visit reports are included in the public record for this investigation. Comments made in relation to like goods are summarised in the following paragraphs.

- Food and photographic grade could be substituted for technical grade SMBS, however it is unlikely that photographic grade could be substituted for food grade SMBS as it may not meet food standards.
- Food grade could be substituted for technical grade but technical grade is not suitable for food grade.
- Incitec has not been able to produce a suitable photographic grade product.
- There are separate markets for all three grades of SMBS (photographic, food and technical grade) and each grade has its own specifications.
- There is no quality issue with SMBS, "it just needs to have the right sulfur content".