

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NOTICE 2738 OF 2024****International Trade Administration Commission of South Africa****Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Waste and Scrap****Review of the Price Preference System Guidelines****1. Introduction**

- 1.1 The International Trade Administration Commission of South Africa (**ITAC** or **the Commission**) is embarking on a review of the *Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Waste and Scrap* (**the Guidelines**) issued in connection with the Price Preference System for waste and scrap metals (**PPS**).
- 1.2 The purpose of this review is to determine how the overall effectiveness and efficiency of the PPS might be improved.
- 1.3 In connection with its review, ITAC is seeking public comment, in particular on the issues identified in the *Discussion* section below.

2. Background

- 2.1 On 10 May 2013, the then Minister of Economic Development issued a trade policy directive (**the Directive**), in terms of Section 5 of the International Trade Administration Act, 2002 (Act No. 71 of 2002) (**the Act**), that the Commission exercise its powers under the Act to regulate the exportation of ferrous and non-ferrous waste and scrap metal (**scrap metal**).
- 2.2 The objectives of the Directive are, *inter alia*, to regulate scrap metal exports so as to ensure an affordable domestic supply of quality scrap metal, an essential material to the domestic processing industry, to safeguard employment and to maintain and increase industrial capacity.

- 2.3 In response to the Directive, ITAC established the PPS. The administrative aspects of the PPS are set out in the Guidelines, initially published in Notice No. R.1012, in Government Gazette No. 41940 of 28 September 2018.
- 2.4 The Guidelines have been amended from time to time to address issues arising from the administration of the PPS.
- 2.5 The current version of the Guidelines was published in Notice No. 532, in Government Gazette Notice No. 43765 of 2 October 2020.
- 2.6 The Guidelines provide, *inter alia*, that ITAC will not permit the exportation of specified scrap metal unless it has first been offered for sale to the domestic consuming industry, for domestic beneficiation, at a price discount and on additional terms as set out in Guidelines.

3. Discussion

- 3.1 In its day-to-day administration of the PPS, the Commission has encountered issues and disagreements on a range of matters that warrant a thorough review of its administration of the PPS in terms of the Guidelines. These issues touch upon the effectiveness of the PPS in meeting its intended goal.
- 3.2 In particular, divergences in how Guidelines are interpreted by stakeholders on the issues identified below are leading to blockages in the administration of the PPS.
- 3.3 Issues of particular concern to the Commission are set forth in paragraph 3.4 below. Although the Commission is seeking comments on these issues, it welcomes comments on any aspect of the administration and functioning of the PPS. Where comments are made, the Commission would appreciate it if these comments were not merely positive or negative indications but would elaborate on why a specific view is being advanced and, where possible, propose alternative solutions.

3.4 The specific issues on which the Commission is seeking comments are as follows:

3.4.1 **DELIVERY (Times and distances)**

3.4.1.1 Current Guidelines

3.4.1.2 Paragraph 8.17 of the Guidelines provides that –

3.4.1.3 *All PPS-related transactions must be concluded during normal office hours, being 8.00 am to 5.00 pm weekly and 8.00 am to 1.00 pm on Saturdays or public holidays (excluding religious holidays), unless otherwise agreed upon by all parties involved in that particular transaction.*

3.4.1.4 Issues

3.4.1.5 The delivery of scrap metal to the premises of a particular purchaser has raised issues around delivery times and delivery distances. As a general matter, the Commission considered that delivery times during normal office hours (8 am – 5 pm) would facilitate the delivery to, and unloading of scrap metal at, the premises of a purchaser. However, delivery of scrap metal may occur, and has occurred, outside these hours. This has raised concerns around the availability of staff at the purchaser's premises performing various functions, including the verification/grading of scrap metal.

3.4.1.6 Other issues include the safeguarding of scrap metal when unloading cannot occur, as well as payment on a cash-on-delivery (**COD**) basis because business banking hours may not extend to late in the afternoon on any given day.

3.4.1.7 Comments on how to create a more seamless transfer process would be welcomed. For example, should office hours be

modified to deal with the above issues and is next-day payment workable?

- 3.4.1.8 Another issue is the, at times, considerable distance between a scrap yard and a purchaser's premises, in particular for inter-province sales. In such transactions, it may be the case that the cost of transportation significantly increases the costs for scrap dealers such that these sales are not commercially viable. In addressing the inter-province purchase of scrap metal, should ITAC consider, amongst others, a rule making it a precondition for scrap metal consumers to initially make offers on scrap metal in the province where they are located, and only where such supply has been exhausted for a particular grade of scrap metal, would, consumers be able to make offers on scrap metal located in another province? Should the delivery costs for inter-province purchases be shared? If yes, on what basis?

3.4.2 **ISRI GRADING (acceptable quality)**

3.4.2.1 Current Guidelines

3.4.2.2 Paragraph 6.2 of the Guidelines provides that –

3.4.2.3 *Upon receipt of the scrap metal at the buyer/consumer's premises, the buyer/consumer is allowed to weigh and inspect the materials to ascertain that the delivered material is the same as agreed when the offer was made and the transaction concluded. Should the scrap material not meet the agreed criteria it may be returned to the seller at the seller's expense.*

3.4.2.4 Issues

3.4.2.5 Disagreements between buyer and sellers have arisen as to whether scrap metal that was delivered meets the relevant ISRI specifications. Although ITAC has been able, on occasion, to dispatch inspectors to examine whether scrap metal conforms to the pertinent ISRI specifications, ITAC is not in a position to do this whenever a dispute arises. Should ITAC request

consumers to document any dispute, for example, by taking videos of the scrap at issue both at the time of loading (seller) and/or at the time of unloading (purchaser)? Comments on possible alternative proposals to resolve such disputes would be welcomed.

- 3.4.2.6 Another grading dispute that has come to the attention of ITAC concerns ferrous scrap metal composition. Relevantly, heavy melting steel, i.e. HMS 80/20, is traded as a blend in a ratio of 80% iron and a 20% mix of other metals, primarily, steel. Should an allowance be made for the 20% or should reference be made to the ISRI grading specifications?

3.4.3 **PAYMENT (methods)**

3.4.3.1 Current Guidelines

- 3.4.3.2 Paragraph 8.19 of the Guidelines provides that –

Payment for scrap metal purchased in terms of the PPS must be by means of bank transfer, electronic transfer or other payment methods but may not include payment in cash.

- 3.4.3.3 Additionally, paragraph 8.15 of the Guidelines provides that –

- 3.4.3.4 *Where a scrap metal consumer is able to produce a bank guarantee or letter, a longer payment settlement period of up to thirty (30) calendar days, in line with the bank guarantee or letter, will be regarded as sufficient for purposes of purchasing scrap metal in terms of the PPS. Parties are also free to negotiate and agree on payment terms which are mutually suitable.*

3.4.3.5 Issues

- 3.4.3.6 In terms of paragraph 8.19, consumers of scrap metal are directed to pay for scrap metal on what amounts to COD. However, where delivery of scrap metal to the premises of a consumer occurs outside of (after) regular banking hours, the

issue arises how to effect a COD payment and whether payment on the next banking day, which might also be the day the related scrap is unloaded, would resolve this issue.

3.4.3.7 The Guidelines also provide for a longer payment period where a purchaser provides the seller with a bank guarantee. Is the extended payment period of 30 calendar days sufficient and/or aligned with industry norms and practices? Issues have arisen around the acceptability of the terms of a bank guarantee. Should ITAC consider setting out the minimum acceptable terms of a bank guarantee, leaving parties free to negotiate any additional terms?

3.4.3.8 Additionally, scrap metal purchasers have informed ITAC that the procurement of a bank guarantee is exceedingly time-consuming and costly and therefore, effectively, impractical. Are there alternatives that would address the complexities in procuring bank guarantees? Would the introduction of credit insurance (with premiums possible being shared between the parties) be a workable alternative to a bank guarantee?

3.4.4 **DISCOUNT FORMULA/PRICE**

3.4.4.1 Current Guidelines

3.4.4.2 Paragraph 4.2 of the Guidelines provides that –

3.4.4.3 *Price preference calculations for scrap metal will be done by ITAC for all the different types of scrap metal listed in paragraph 3 (and the various grades thereof as the case may be) using, in general but not exclusively, ScrapIndex.com as an international benchmark price. From the average price achieved during the previous day, week, two weeks, month, or quarter, where applicable, for the different types and grades of scrap metal, an amount of 30% will be deducted to reflect the price at which ferrous scrap metal must be offered for sale to the domestic consuming industry, and an amount of 25% will be deducted to reflect the price at which aluminium scrap metal must be offered for sale to the domestic consuming industry, and an amount of 20% will be deducted to reflect the price at*

which all other scrap metal must be offered for sale to the domestic consuming industry.

3.4.4.4 Paragraph 4.3 of the Guidelines, **as amended** on 25 February 2022, provides that –

3.4.4.5 *Notwithstanding the above, the price preference price for red metal waste and scrap including copper, brass and bronze waste and scrap as listed here-under, will be calculated by using the London Metal Exchange index price (LME full price) as an international benchmark average price. From the average price achieved and based on the average exchange rate during the previous day, week, two weeks, month or quarter, where applicable, for the different types and grades of red metal waste and scrap, an amount of 10% will be deducted to reflect the price at which the different grades of red metal waste and scrap must be offered for sale to the domestic consuming industry.*

The method of calculation of the above-mentioned price preference prices for the different ISRI grades to be applied by ITAC as the formula is the calculation of the Rand value and 10% PPS discount against the percentage of the red scrap metal content as reflected in the column here-under.

3.4.4.6 Paragraph 4.5 of the Guidelines, **as amended** on 25 February 2022, provides that –

3.4.4.7 *With regard to the calculation of the price preference at which the following waste and scrap metal of aluminium must be offered for sale to the domestic consuming industry –*

*Clean Mixed Old Alloy Sheet, also known as Taint/Tabor;
Aluminium extrusions also known as Toto/Tutu/Tread;
Mixed borings and turnings, also known as Telic/Teens;
Mixed low copper aluminium clippings and solids, also known as Taboo/Tough/Tooth; New clean aluminium lithograph sheets scrap, also known as Tabloid/Tablet;
Mixed cast aluminium scrap also known as Tense/Trump;
clean painted aluminium ... Copper/aluminium radiators, also known as Talk;*

The method of calculation of the above-mentioned price preference prices for the different ISRI grades to be applied by ITAC as the formula is the calculation of the Rand value and 25% PPS discount against the percentage of the aluminium scrap metal content as reflected in the column here-under.

3.4.4.8 Issues

3.4.4.9 The Directive, which was the basis for PPS, instructed ITAC to devise a system that would provide domestic consumers of scrap metal with affordable, quality scrap metal. The Directive did not specify a price methodology or formula for achieving this policy goal. Accordingly, ITAC determined the discount formulae to be used to calculate the PPS price for the various grades of scrap metal subject to the PPS. This is set forth in the Guidelines.

3.4.4.10 In 2021, ITAC was considering amending the pricing formulae used to calculate the PPS prices for aluminium and red metal (copper) scrap metals. (See Notice 516, in Government Gazette No. 45099 of 03 September 2021, which sets forth ITAC's request for comments.)

3.4.4.11 Subsequent to the evaluation of the comments received, ITAC amended the formulae for aluminium and copper scrap metals. This amendment was published in Notice No. 852, in Government Gazette No. 45954, dated 25 February 2022.

3.4.4.12 The view has been expressed that the amended calculation methodologies/formulae for aluminium and copper scrap metals are being incorrectly applied and, therefore, are not in keeping with the calculation of a 25% and 10% discount, respectively. Although, ITAC of the view that the current formulae are being correctly applied, ITAC welcomes comments on this issue and any other issues dealing with this the PPS discount formulae.

3.4.5 DURATION OF APPLICATION PROCESS

3.4.5.1 Current Guidelines

3.4.5.2 Paragraph 6.1 of the Guidelines provides that –

3.4.5.3 *If a member of the domestic consuming industry wishes to purchase scrap metal listed in a circular, it must, before the end of a circulation period of fifteen (15) working days, submit a valid offer to purchase and all the communication pertaining thereto between it and an applicant to ITAC. Interested buyers must be allowed access to available scrap metal as applied for and circulated by ITAC, for inspection purposes before an offer is made.*

3.4.5.4 Issues

3.4.5.5 Scrap metal dealers have approached ITAC contending that the 15-day circulation period is too long and too disruptive. Further, exception has been taken when, at times, consumers make offers only late in the circulation period. Does the circulation period need to be amended (shortened) and should the Guidelines specify that offers must be made within a certain number of days of the commencement of the circulation period?

3.4.6 STAKEHOLDER ENGAGEMENT (Technical Working Group)

3.4.6.1 Current Guidelines

3.4.6.2 Paragraph 5.1 of the Guidelines provides that –

3.4.6.3 *A technical Working Group consisting of, where available, one representative of the Metal Recyclers Association, the South African Iron and Steel Institute, the Institute of Foundrymen, the Aluminium Federation of SA, The Copper Development Association Africa, the Nonferrous Metal Association, the International Zinc Association of Southern Africa, the Recyclers Association of SA, any other applicable industry representative organization, and ITAC, may meet as and when requested by*

ITAC to discuss issues specific to the administration of the PPS.

3.4.6.4 Issues

3.4.6.5 Although contemplated in the Guidelines, a Technical Working Group (**TWG**) has not been constituted. Because ITAC believes that such a group may assist in resolving issues specific to the administration of the PPS, it is planning on constituting the TWG with the referenced (and other) industry stakeholders. Should such a forum be established and what issues should be up for discussion?

3.4.7 **VALIDITY PERIOD OF PERMITS**

3.4.7.1 Current Guidelines

3.4.7.2 Paragraph 8.11 of the Guidelines provides that –

3.4.7.3 *The ISRI specification or grade of the scrap metal as declared to ITAC and reflected on the export permit must be declared on all export documentation including the sales invoice, container packing list, Bill of Lading and the Bill of Entry for Export, etc. Export container numbers must be declared on the original SARS Customs Bill of Entry for export before exportation of scrap metal as authorised in the permit. ITAC export permits for the exportation of scrap metal is valid for a period of two months only, as indicated on the permit.*

3.4.7.4 Issues

3.4.7.5 Concerns have been raised whether the 2-month validity period for scrap metal permits issued by ITAC is sufficiently long. In light of the frequent congestion at ports and lack of shipping containers, should the validity period be lengthened and/or should provision be made for the extension of this period?

3.4.8 **NEGOTIATIONS (Terms of sale)**

3.4.8.1 Current Guidelines

3.4.8.2 Paragraph 8.14 of the Guidelines provides that –

3.4.8.3 *It is accepted that applicants who apply for export permits to supply foreign buyers are fully equipped to supply local consumers. Applicants applying for export permits must therefore be in possession of adequate supply facilities including access to scrap metal for suitable trucks and heavy vehicles such as Tri-axle or superlink trucks to yards where scrap metal is located and must have adequate loading and weighing facilities. Shipping containers are not regarded as suitable for loading and transportation of scrap supplied to domestic consumers. Failure to provide adequate access, loading and weighing facilities shall be deemed a material impediment to the objectives of the PPS which may constitute grounds of refusal of an export permit. Parties are free to negotiate and agree on terms of sale which are mutually suitable.*

3.4.8.4 Issues

3.4.8.5 The Guidelines contain certain terms and conditions regarding the sale of scrap metal (for example, pursuant to paragraph 6.2, non-confirming scrap metal may be returned to the seller at the seller's expense). Additionally, paragraph 8.14 provides that the parties are "free to negotiate and agree on terms of sale which are mutually suitable". At times, however, negotiations have continued for extended periods of time without parties being able to agree on final terms and conditions. In such situations, ITAC may be required to intervene. What should the parameters of such an intervention be? Should additional terms and conditions be added to the Guidelines?

4. **Comments**

4.1 Any comments on the PPS must be received by the Commission no later than 4 weeks from the date of publication of this Notice.

4.2 Comments should be sent by e-mail to the following ITAC official:

Mr Donovan Mitchell at: dmitchell@itac.org.za.

Should you have any queries, please contact Mr Mitchell at the above email address.