

NOTICE 635 OF 2013**INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM AND NETHERLANDS.**

The International Trade Administration Commission (the Commission) accepted an application alleging that frozen potato chips were being dumped in the Southern African Customs Union (SACU) market, causing material injury to the SACU industry concerned.

The applicant submitted sufficient evidence and established a *prima facie* case to enable the Commission to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, material injury and causality.

THE APPLICANT

The application was lodged by McCain Foods (SA) (Pty) Ltd (the applicant), a major producer of frozen potato chips in the SACU, supported by Nature's Choice Products (Pty) Ltd, Lamberts Bay Foods Ltd and Potatoes South Africa.

THE PRODUCT

The product allegedly being dumped is frozen potato chips, classifiable under tariff sub-heading 2004.10.90, originating in or imported from Belgium and Netherlands.

THE ALLEGATION OF DUMPING

The allegation of dumping is based on the comparison between the normal value in Belgium and Netherlands and the export price from Belgium and Netherlands. The normal values were determined based on a European pricelist from within Benelux (Belgium, Netherlands and Luxembourg). The export prices were based on official import statistics obtained from the South African Revenue Service.

On this basis, the Commission found that there was *prima facie* proof of dumping.

THE ALLEGATION OF MATERIAL INJURY AND CAUSAL LINK

The applicant submitted evidence to show that there is price undercutting and price depression. The applicant's information indicated a decline in sales volume, sales value, employment, market share, return on investment, ability to raise capital, negative growth, negative net cash flow, loss making situation and increase in inventory.

On this basis, the Commission found that there was *prima facie* proof of material injury and causal link.

PERIOD OF INVESTIGATION

The period of investigation for purposes of determining the dumping margin will be from 01 January 2012 to 31 December 2012. The period of investigation for purposes of determining the material injury will be from 01 July 2009 to 30 June 2012 plus additional six month information for 2010 to 2012 (01 July to 31 December).

PROCEDURAL FRAMEWORK

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of an investigation, the Commission decided to initiate an investigation in terms of section 16 of the International Trade Administration Act, 2002 (the ITA Act). The Commission will conduct its investigation in accordance with the relevant sections of the ITA Act and the Anti-Dumping Regulations of the International Trade Administration

Commission (ADR). Both the ITA Act and the ADR are available on the Commission's website (www.itac.org.za) or from the Trade Remedies section, on request.

In order to obtain the information it deems necessary for its investigation, the Commission will send non-confidential versions of the application and questionnaires to all known importers and exporters, and known representative associations. The trade representative of the exporting countries has also been notified. Importers and other interested parties are invited to contact the Commission as soon as possible in order to determine whether they have been listed and were furnished with the relevant documentation. If not, they should immediately ensure that they are sent copies. The questionnaire has to be completed and any other representations must be made within the time limit set out below.

CONFIDENTIAL INFORMATION

Please note that if any information is considered to be confidential then a non-confidential version of the information must be submitted for the public file, simultaneously with the confidential version. In submitting a non-confidential version the following rules are strictly applicable and parties must indicate:

- where confidential information has been omitted and the nature of such information;
- reasons for such confidentiality;
- a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information; and
- in exceptional cases, where information is not susceptible to summary, reasons must be submitted to this effect.

This rule applies to all parties and to all correspondence with and submissions to the Commission, which unless indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and be made available to other interested parties.

If a party considers that any document of another party, on which that party is submitting representations, does not comply with the above rules and that such non-compliance affects that party's ability to make meaningful representations, the details of the non-compliance and the reasons why that party's rights are so affected must be submitted to the Commission in writing forthwith (and at the latest 14 days prior to the date on which that party's submission is due). Failure to do so timeously will seriously hamper the proper administration of the investigation, and such party will not be able to subsequently claim an inability to make meaningful representations on the basis of the failure of such other party to meet the requirements.

Subsection 33(1) of the ITA Act provides that any person claiming confidentiality of information should identify whether such information is *confidential by nature* or is *otherwise confidential* and, any such claims must be supported by a written statement, in each case, setting out how the information satisfies the requirements of the claim to confidentiality. In the alternative, a sworn statement should be made setting out reasons why it is impossible to comply with these requirements.

Section 2.3 of the ADR provides as follows:

"The following list indicates "information that is by nature confidential" as per section 33(1)(a) of the Main Act, read with section 36 of the Promotion of Access to Information Act (Act 2 of 2000):

- (a) management accounts;*
- (b) financial accounts of a private company;*
- (c) actual and individual sales prices;*
- (d) actual costs, including cost of production and importation cost;*
- (e) actual sales volumes;*
- (f) individual sales prices;*
- (g) information, the release of which could have serious consequences for the person that provided such information; and*

(h) information that would be of significant competitive advantage to a competitor, provided that a party submitting such information indicates it to be confidential".

ADDRESS

The response to the questionnaire and any information regarding this matter and any arguments concerning the allegation of dumping and the resulting threat of material injury must be submitted in writing to the following address:

Physical address

The Senior Manager: Trade Remedies II
International Trade Administration Commission
Block E – The DTI Campus
77 Meintjies Street
SUNNYSIDE
PRETORIA
SOUTH AFRICA

Postal address

The Senior Manager:
Trade Remedies II
Private Bag X753
PRETORIA
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SOUTH AFRICA

PROCEDURES AND TIME LIMITS

The Senior Manager: Trade Remedies II, should receive all responses, including non-confidential copies of the responses, not later than 30 days from the date hereof, or from the date on which the letter accompanying the abovementioned questionnaire was received. The said letter shall be deemed to have been received seven days after the day of its dispatch.

Late submissions will not be accepted except with the prior written consent of the Commission. The Commission will give due consideration to written requests for an extension of not more than 14 days on good cause shown (properly motivated and substantiated), if received prior to the expiry of the original 30-days period. Merely citing insufficient time is not an acceptable reason for extension.

Please note that the Commission will not consider requests for extension by the Embassy on behalf of exporters.

The information submitted by any party may need to be verified by the Investigating Officers in order for the Commission to take such information into consideration. The Commission may verify the information at the premises of the party submitting the information, within a short period after the submission of the information to the Commission. Parties should therefore ensure that the information submitted would subsequently be available for verification. It is planned to do the verification of the information submitted by the exporters within three to five weeks subsequent to submission of the information. This period will only be extended if it is not feasible for the Commission to do it within this time period or upon good cause shown, and with the prior written consent of the Commission, which should be requested at the time of the submission.

It should be noted that unavailability of, or inconvenience to consultants will not be considered to be good cause.

Parties should also ensure when they engage consultants that they will be available at the requisite times, to ensure compliance with the above time frames. Parties should also ensure that all the information requested in the applicable questionnaire is provided in the specified detail and format.

Parties who experience difficulty in furnishing the information required, or submitting in the format required, are therefore urged to make written applications to the Commission at an early stage for permission to deviate from the questionnaire or provide the information in an alternative format that can satisfy the Commission's requirements.

The Commission will give due consideration to such a request on good cause shown.

Any interested party may request an oral hearing at any stage of the investigation in accordance with Section 5 of the ADR, provided that the party indicates reasons for not relying on written submission only. The Commission may refuse an oral hearing if granting such hearing will unduly delay the finalisation of a determination.

Parties requesting an oral hearing shall provide the Commission with a detailed agenda for, and a detailed version, including a non-confidential version, of the information to be discussed at the oral hearing at the time of the request.

If the required information and arguments are not received in a satisfactory form within the time limit specified above, or if verification of the information cannot take place, the Commission may disregard the information submitted and make a finding on the basis of the facts available to it.

Enquiries may be directed to the investigating officer, Mr Edwin Mkwanazi at +27 12 394 3742 or Mr Sandile Mantolo at +27 12 394 3902 or Ms Mercy Mukwevho at +27 12 394 3907 and Ms Boniswa Mehlomakulu at +27 394 3818 or at fax number 012 394 0518.