

NOTICE 757 OF 2013**INTERNATIONAL TRADE ADMINISTRATION COMMISSION****INVITATION TO PUBLIC INTEREST HEARING IN THE INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF SAFEGUARDS AGAINST THE INCREASED IMPORTS OF FROZEN POTATO CHIPS**

On 08 March 2013, the International Trade Administration Commission of South Africa (the Commission) initiated an investigation for remedial action in the form of a safeguard against the increased imports of frozen potato chips. The notice of initiation was published through notice No. 175 in *Government Gazette* No. 36207 on 08 March 2013.

THE APPLICANT

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

DESCRIPTION OF THE SUBJECT PRODUCTS UNDER INVESTIGATION

The subject product is described as "frozen potato chips" or commonly known (in South Africa) as slap chips or French fries/pommes frites/chips, classifiable under tariff subheading 2004.10.90.

DESCRIPTION OF THE LIKE OR DIRECTLY COMPETITIVE SACU PRODUCT

The SACU product is described as "frozen potato chips" or commonly known (in South Africa) as slap chips or French fries/pommes frites/chips, classifiable under tariff subheading 2004.10.90.

CRITICAL CIRCUMSTANCES AND PROVISIONAL MEASURES

The Commission made a preliminary determination that there is evidence that the increased imports have caused serious injury to the SACU industry. The Commission further made a preliminary determination that there are critical circumstances where a delay in imposition of measures would cause damage that would be difficult to repair.

Therefore, the Commission decided to request the Commissioner for the South African Revenue Service, in terms of section 57A of the Customs and Excise Act, 91 of 1964, to impose provisional measures, to the amount of 61.42 per cent, for a period of 200 days. The provisional measures were imposed on 05 July 2013.

PROCEDURAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (ITA Act) and the International Trade Administration Commission Safeguard Regulations (SGR), read with the World Trade Organization Agreement on Safeguards (the Safeguard Agreement).

PROCEDURES AND TIME LIMITS

Interested parties are invited to submit comments on whether it will be in the public interest to impose definitive safeguard measures on the subject product, in accordance with Section 20.2 of the SGR.

A public hearing is scheduled for 04 September 2013 at 10h00 at the address as indicated below. All interested parties which wish to attend the public hearing on public interest and wish to make oral representations to the Commission on public interest, should indicate their intention to attend on or before 21 August 2013 at 15h00 to the Senior Manager: Trade Remedies I.

All interested parties which wish to address the Commission on public interest should submit a detailed version, including a non-confidential version, of the information to be discussed at the public hearing, in writing to the Senior Manager:

Trade Remedies I on or before 28 August 2013 at 15h00. A party that did not timeously submitted a non-confidential version of the information to be discussed at the public hearing will not be allowed to take part in the public hearing.

Parties requesting to attend the public hearing should note that this will be an open hearing with all parties present and only non-confidential information should be presented during the public hearing. As indicated parties are at liberty to submit a confidential version of the information in writing to the Commission, on or before 28 August 2013.

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, a sworn affidavit setting out the reasons why it is impossible to comply, should be provided.

A sworn affidavit is defined as a written sworn statement of fact voluntarily made by an affiant or deponent under an oath or affirmation administered by a person authorized to do so by law. Such statement is witnessed as to the authenticity of the affiant's signature by a taker of oaths, such as a notary public or commissioner of oaths.

An affidavit is a type of verified statement or showing, or in other words, it contains verification, meaning it is under oath or penalty of perjury and this serves as evidence to its veracity and is required for court proceedings.

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 deficiency affects that party's ability to make meaningful representations, the details of the deficiency 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 quote the SGR 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

Any information regarding this matter must be submitted in writing to the following address:

Physical address

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

Postal address

Senior Manager: Trade Remedies I
Private Bag X753
PRETORIA
0001
SOUTH AFRICA

Enquiries may be directed to Ms Carina van Vuuren at telephone +27 12 394-3594 or the investigating officers Mr Elias Tema at +27 12 394-3640 and Mr Busman Makakola at +27 12 394 3380 or at fax +27 12 394-0518.