

DEPARTMENT OF TRADE AND INDUSTRY

NOTICE 393 OF 2019

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITIATION OF THE SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON FROZEN POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM AND THE NETHERLANDS

In accordance with the provisions in section 53.1 of the Anti-Dumping Regulations, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and material injury.

On 08 June 2018, the International Trade Administration Commission of South Africa (the Commission) notified the interested parties through Notice No. 326 of 2018 in Government Gazette No. 41685, that unless a substantiated request is made by the SACU industry indicating that the expiry of the anti-dumping duties against imports of frozen potato chips originating in or imported from Belgium and the Netherlands would likely lead to the continuation or recurrence of dumping and material injury, the anti-dumping duties on frozen potato chips originating in or imported from Belgium and the Netherlands will expire on 07 August 2019. A detailed response to the Commission's sunset review questionnaire was received on 07 February 2019.

THE APPLICANT

The application was lodged by McCain Foods SA (Pty) Ltd (the applicant) representing the Southern African Customs Union (SACU) industry. The applicant represents more than 60% by production volumes of the SACU producers of the subject product. Lamberts Bay Foods and Natures Garden (Pty) Ltd both supported the application.

THE PRODUCT

Belgium and the Netherlands. The product allegedly being dumped is Chips or French Fries, prepared by blanching in water and prevented from discolouration by blanching in oil, frozen but not further prepared or processed (whether or not containing added dextrose) and Other Chips or French Fries.

The subject product is normally referred to as Frozen Potato Chips, classifiable under tariff headings 2004.10.21; and 2004.10.29.

THE ALLEGATION OF THE CONTINUATION OF DUMPING

The allegation of the continuation of dumping is based on the comparison between the normal value in Belgium and the Netherlands, and the export price in Belgium and the Netherlands.

Normal value

The normal values for both Belgium and the Netherlands were determined from online retail shopping advertisements obtained by the applicant from the websites of the retailers in Belgium and the Netherlands.

Export price

The export prices for both Belgium and the Netherlands were determined from the South African Revenue Services' import statistics.

On these basis, the Commission found that there was *prima facie* proof indicating that the expiry of the anti-dumping duties would likely lead to the continuation and/or recurrence of dumping of the subject product imported from or originating in Belgium and the Netherlands.

THE ALLEGATION OF RECURRENCE OF MATERIAL INJURY

The applicant presented information that indicates that the expiry of the anti-dumping duties would likely lead to the recurrence of material injury in the form of significant undercutting, depression and suppression of the SACU industry prices, and significant adverse changes in the domestic performance of the SACU industry.

On this basis, the Commission found that there was *prima facie* proof indicating that the expiry of the anti-dumping duties would likely lead to the recurrence of material injury.

PERIOD OF INVESTIGATION

The period of investigation for dumping is from 01 July 2017 to 30 June 2018. The period of investigation for material injury is from 01 July 2015 to 30 June 2018 and estimates should the anti-dumping duties be removed.

PROCEDURAL FRAMEWORK

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of a sunset review investigation, the Commission has begun 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 of South Africa (ADR) giving due regard to the World Trade Organisation Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement). 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 country 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.

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 in 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 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."

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 signing.

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 day 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.

The questionnaires are designed to ensure that the Commission is provided with all the information required to make a determination. The Commission may therefore refuse to verify information that is incomplete or does not comply with the format in the questionnaire, unless the Commission has agreed in writing to a deviation from the required format. Failure to submit an adequate non-confidential version of the response that complies with the rules set out above under the heading *Confidential Information* and in the questionnaire will be regarded as an incomplete submission.

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.

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
0001
SOUTH AFRICA

Enquiries may be directed to the investigating officers, Mr Pfananani Muumba at +27 12 394 3689 or Mr Sandile Mantolo at +27 12 394 3902.