

**NOTICE 1403 OF 2009****INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF PICKS ORIGINATING IN OR IMPORTED FROM INDIA**

The International Trade Administration Commission (the Commission) accepted an application alleging that picks originating in or imported from India are being dumped in the Southern African Customs Union (SACU) market and this is threatening to cause material injury to the SACU industry concerned.

**THE APPLICANT**

The application was lodged by Ussher Inventions (Pty) Ltd, trading as Lasher Tools being the only manufacturer of the subject product in SACU. The Applicant alleges that the allegedly dumped products are threatening to cause it material injury. 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, a threat of material injury and causality.

**THE PRODUCT**

The product allegedly being dumped is picks, classifiable under tariff subheading 8201.30.03, originating in or imported from India.

**THE ALLEGATION OF DUMPING**

The allegation of dumping is based on the comparison between the normal value in India and the export price from India. The normal value was determined based on a quotation provided by an Indian company for picks when sold in the Indian domestic market. The export price was determined based on the official import statistics as obtained from the South African Revenue Service for the period 1 July 2008 to 31 March 2009.

An adjustment of 5 per cent was made to the FOB import price to calculate the ex-factory export price. On this basis, the Commission found that there was *prima facie* proof of dumping.

#### **THE ALLEGATION OF THREAT OF MATERIAL INJURY AND CAUSAL LINK**

The Applicant alleges that a threat of material injury exists since the termination of the previously existing anti-dumping duties, especially as the subject product continued to be exported at allegedly dumped prices to SACU from India even during the period that anti-dumping duties were in place. The Applicant submitted estimates to indicate the extent of the threat of material injury that exists.

The Applicant submitted evidence to show that there is a threat of price undercutting and price suppression. The Applicant's information indicated that a threat of a decline in sales volume, output, market share, productivity, utilisation of capacity and growth, as well as a negative effect on cash flow, inventories, return on investment and employment exists.

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

#### **PERIOD OF INVESTIGATION**

The period of investigation for purposes of determining the dumping margin in the exporting country of origin will be from 1 July 2008 to 30 June 2009. The period of investigation for purposes of determining the threat of material injury will be from 1 July 2006 to 30 April 2009, with an estimate of the threat of material injury up to 30 April 2010. If there are subsequent events that are relevant to the allegation of a threat of material injury, the Commission may later request and consider further and more recent information.

#### **PROCEDURAL FRAMEWORK**

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of an investigation, the Commission has commenced 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, the World Trade Organisation

Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement) and the Anti-Dumping Regulations of the International Trade Administration Commission of South Africa (ADR). Both the ITA Act and the ADR are available on the Commission's website ([www.itac.org.za](http://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. The questionnaire has to be completed and any other representation 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 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 representation, does not comply with the above rules and that such deficiency affects that party's ability to make meaningful representation, 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 representation 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 would satisfy 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 I  
International Trade Administration Commission

**Block E** – The DTI Campus

77 Meintjies Street

SUNNYSIDE

PRETORIA

SOUTH AFRICA

**Postal address**

The Senior Manager: Trade Remedies I

Private Bag X753

PRETORIA

0001

SOUTH AFRICA

**PROCEDURES AND TIME LIMITS**

All responses, including non-confidential copies of the responses, should be received by the Senior Manager: Trade Remedies I 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 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 Embassies 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 will 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 conduct the verification within this time period or upon good cause shown, and with 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 in accordance with the rules of Anti-Dumping Agreement. 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*, will be regarded as an incomplete submission.

Parties who experience difficulty in furnishing the information required, or submitting it 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 would 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 officers, Ms Mandie Wagner at telephone +27 12 394-3593 or Mr André Zietsman at telephone +27 12 394-3673 or at fax +27 12 394-0518.**