

NOTICE 763 OF 2008**INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA****DECISION BY THE COMMISSION TO RESCIND ITS DECISION TO INITIATE SUNSET AND INTERIM REVIEWS OF THE ANTI-DUMPING DUTIES ON CARBON BLACK ORIGINATING IN OR IMPORTED FROM EGYPT AND INDIA AND THE SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON GALVANISED STEEL TUBES AND PIPES ORIGINATING IN OR IMPORTED FROM INDIA**

In accordance with the provisions of Sub-Part IV of the Anti-Dumping Regulations and Article 11.3 of the World Trade Organisation Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-dumping Agreement"), any definitive anti-dumping duty shall be terminated on a date not later than five years from the date of 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 likely lead to the continuation or recurrence of dumping and injury.

In terms of the WTO Anti-dumping Agreement and the Anti-dumping Regulations, the initiation of any sunset review must occur prior to the expiry of the aforementioned five-year period to keep the anti-dumping duty in force beyond the period of five years.

In the case of *Progress Office Machines versus SARS, ITAC and others* that was heard in the Supreme Court of Appeal (SCA) the question was whether the date on which anti-dumping duties are imposed should be taken as the date on which the notice by SARS is published, indicating an amendment to Schedule No. 2 to the Customs and Excise Act, or be taken as the date from which the amendment is stipulated as having retrospective effect, that is the date on which provisional payments were imposed. The SCA decided on 26 September 2007 that the anti-dumping duties were imposed on the date from which they had retrospective effect and therefore the ruling of the SCA was that the five-year period starts on this retrospective date. This is in contrast with how the International Trade Administration Commission has always calculated the five-year lapse date of an anti-dumping duty.

The Commission has always, in accordance with international practice, calculated the five years from the date of the publication of the definitive anti-dumping duty.

The amendment to Schedule No. 2 to the Customs and Excise Act giving effect to the decision to impose anti-dumping duties on carbon black originating in or imported from Egypt and India was published on 10 September 1999 but with retrospective effect from 05 February 1999. In terms of the SCA's decision in *Progress Office Machines vs ITAC and others*, the sunset review of the anti-dumping duties on carbon black originating in or imported from Egypt and India had to be initiated by 05 February 2004. However, the sunset and interim reviews were only initiated on 23 July 2004.

The amendment to Schedule No. 2 to the Customs and Excise Act giving effect to the decision to impose an anti-dumping duty on galvanized steel tubes and pipes originating in or imported from India was published on 14 June 2002 but with retrospective effect from 8 February 2002. Similarly, in terms of the SCA's decision in *Progress Office Machines vs ITAC and others*, the sunset review of the anti-dumping duty on galvanized steel tubes and pipes originating in or imported from India had to be initiated by 8 February 2007. However, the sunset review was only initiated on 13 June 2007.

On 13 December 2007, the Commission made a preliminary decision, based on the SCA's judgment, to rescind its decision to initiate the sunset and interim review investigations of the anti-dumping duties on carbon black originating in or imported from Egypt and India and the sunset review on the anti-dumping duties on galvanized steel tubes and pipes originating in or imported from India. According to the SCA's judgment, these investigations were initiated after the five-year expiry date.

On 14 December 2007, interested parties were of the Commission's preliminary decision and invited to comment.

On 13 May 2008, the Commission considered all the available information and comments received and made a final decision to rescind its decision to initiate the sunset and interim review investigation of the anti-dumping duties on carbon black originating in or imported from Egypt and India, and the sunset review investigation of the anti-dumping duties on galvanized steel tubes and pipes originating in or imported from India.

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