

**NOTICE 625 OF 2009****INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED CIRCUMVENTION OF THE PROVISIONAL DUTIES AGAINST IMPORTS OF TALL OIL FATTY ACID ORIGINATING IN OR IMPORTED FROM SWEDEN.**

The International Trade Administration Commission of South Africa (the Commission) received an application alleging that circumvention of the provisional duties against imports of tall oil fatty acid originating in or imported from Sweden, through importing from USA, is taking place in the form of country hopping. Section 60.8 of the Anti-Dumping Regulation (ADR 60.8) states that country hopping shall be deemed to take place if imports, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation, switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory.

**THE APPLICANT**

The Application was lodged by International Trade Services on behalf of Industrial Oleochemical Products (the Applicant), being the sole manufacture of the subject product under investigation in SACU. The Applicant alleged that subsequent to the imposition of the provisional payments against imports of the subject product from Sweden, importers identified as interested parties in the original investigation have shifted to sourcing the subject product from USA. The Applicant submitted sufficient *prima facie* evidence to indicate that country hopping, in terms of ADR 60.8, is taking place. The Commission, therefore, decided to initiate a country hopping investigation.

## THE PRODUCT

The product allegedly being circumvented is tall oil fatty acid originating or imported from Sweden, classifiable under tariff subheading 3823.13, and the product being dumped is tall oil fatty acid, classifiable under tariff subheading 3823.13, originating in or imported from USA. Based on the information submitted by the Applicant, the Commission decided that the Applicant submitted *prima facie* evidence to indicate that the imported product and the SACU product are "like products" in terms of Article 2.6 of the Anti-Dumping Agreement and Section 1 of the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR 1).

## THE ALLEGATION OF DUMPING

The allegation of dumping is based on the comparison between the normal value that was verified at the exporter in Sweden in accordance with ADR 62.3, and the export price derived from the import statistics obtained from South African Revenue Services (SARS). On this basis, the Commission found that there was *prima facie* evidence of dumping.

## THE ALLEGATION OF MATERIAL INJURY

The applicant alleges and submitted sufficient evidence to show that they are suffering material injury in the form of price undercutting, price suppression, a decline in sales, profit margin, market share, productivity and capacity utilisation. It further indicated that there is a negative effect on cash flow, growth and ability to raise capital. It was also evident that the decrease in market share has been at the expenses of a corresponding increase in the market share of the allegedly dumped goods. On this basis the Commission found that there was *prima facie* proof of material injury, or threat of material injury, and causal link in the original investigation and that was considered for purposes of this application in line with ADR 62.2.

## PERIOD OF INVESTIGATION

The period of investigation for the purposes of determining the dumping margin in the exporting country will be from 1 June 2008 to 28 February 2009.

## PROCEDURAL FRAMEWORK

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of an 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, 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 the 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 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:

- a) where confidential information has been omitted and the nature of such information;
- b) reasons for such confidentiality;
- c) a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information; and
- d) 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 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) 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;*
- Provide 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 circumvention, and the resulting 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

## PROCEDURES AND TIME LIMITS

All responses, including non-confidential copies of the responses, should be received by

the Senior Manager: Trade Remedies II 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-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 an Embassy on behalf of the exporter.

The information submitted by any party may need to be verified by the investigating officials 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 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 in accordance with the rules of the 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. A 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 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, at the time of request, with a detailed agenda for, and a detailed version, including a non-confidential version, of the information to be discussed at the oral hearing. Oral representations will be limited to one hour for SACU manufacturers and exporters and thirty minutes for importers.

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 is not possible, 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, Mr Jeffrey Maphagela at telephone +27 12 394 3639, Mr Robert Mudau at +27 12 394 3902 and Ms S Dlamini at +27 12 394 3685 or at fax +27 12 394 0518.**