

NOTICE 916 OF 2009

INTERNATIONAL TRADE ADMINISTRATION COMMISSION**RESUMPTION OF THE INVESTIGATION INTO THE ALLEGED DUMPING OF
DETONATING FUSES AND DELAY DETONATORS (COMMONLY KNOWN AS
SHOCKTUBES), ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC
OF CHINA.**

On 15 June 2005, the International Trade Administration Commission of South Africa (Commission) formally initiated an investigation into the alleged dumping of detonating fuses and delay detonators (commonly known as shock tubes) originating in or imported from the People's Republic of China (PRC). Notice of the initiation of the investigation was published in Notice No.1099 in *Government Gazette* No. 27735 dated 8 July 2005.

The investigation was initiated after the Commission decided that African Explosives Ltd (AEL) (the Applicant) submitted *prima facie* information that detonating fuses and delay detonators (commonly known as shock tubes) originating in or imported from the People's Republic of China (PRC) were imported into the Southern African Customs Union (SACU) at dumped prices, causing the SACU industry material injury.

In the application, the Applicant indicated that it is the sole producer of the subject product within SACU. It further alleged that domestic selling prices in the PRC were influenced by government intervention. It nominated Ghana as a surrogate country for the purposes of calculating the normal value for the PRC, and stated that Ghana had an industry on the same level of development as that in the PRC. It therefore based the normal value on the domestic selling price in Ghana and provided prices and a letter of co-operation from its sister company in Ghana.

Subsequent to initiation exporters questionnaires and importers questionnaires were sent to the various known interested parties for completion. All the parties that responded in the investigation questioned the suitability of Ghana as a surrogate country.

As a result of the above response, AEL was requested to provide cost build-ups for the models of subject product sold in Ghana. This was provided and it was confirmed that the company in Ghana assembles the shocktube products imported from South Africa and Sweden.

Based on the above information, the Commission found that Ghana does not have a shocktube industry as envisaged in the regulations and that the information provided with regard to normal value in Ghana, could not be used for purposes of the calculation of the dumping margin.

With regard to the Applicant's statement that it is the sole producer of the subject product in SACU, Sasol-Dyno Nobel (SDN) provided information, which was verified, indicating that they did indeed manufacture the product in South Africa.

At its meeting of 16 November 2005, the Commission made a preliminary determination to revoke its decision to initiate the investigation in terms of Section 26(6) of the ITA Act which provides *inter alia* as follows:

The Commission may amend or revoke a decision or recommendation concerning an application if-

(a) the decision or recommendation was based on incorrect information and the applicant or supplier of the information-

- (i) was responsible for the error in the information; and
- (ii) benefited or could have benefited, from the decision or recommendation;

On 18 November 2005 this determination was conveyed to the Applicant who was given an opportunity to respond. Written and oral representations made to the Commission were considered by it in making its final decision. The Commission noted the arguments raised and accepted that the applicant based its application on information which was reasonably available to it.

The Commission considered that incorrect information that was submitted by the Applicant influenced its decision to initiate the investigation. It therefore made a final decision to invoke section 26(6) of the ITA Act and thus revoke its decision to initiate the investigation into the alleged dumping of detonating fuses and delay detonators (commonly known as shock tubes) originating in or imported from the PRC.

On 27 January 2006 this investigation was terminated through Government Gazette No 28438, notice NO 142 of 2006.

In May 2006 the Applicant applied to the High Court of South Africa (Transvaal Provincial Division) to review and set aside the decision of the Commission. The review application was heard in the Pretoria High Court and the Commission was directed by way of a judgment of the High Court to continue with the investigation.

In order to continue with the investigation as ordered by the High Court, the Applicant was requested to provide the Commission with updated material injury information.

The Applicant provided the Commission with its updated injury information and indicated that the other domestic producer, Sasol Dyno Nobel (SDN), will not cooperate with it in the investigation. SDN also responded to a request from the Commission to provide updated injury information but they indicated that they do not intend supplying updated information.

The updated information supplied by the Applicant was verified.

In accordance with the order of the High Court the Commission hereby wishes to notify all interested parties that the investigation is now being resumed.

In order to obtain the information it deems necessary for its investigation, the Commission will send non-confidential versions of the updated injury information to all known importers and exporters, and known representative associations for comment. The trade representative of the exporting country will also be 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. Comments have to be submitted and any other representations must be made within the time limit set out below.

PROCEDURES AND TIME LIMITS

The Senior Manager: Trade Remedies I 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 information 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 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 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. A failure to submit an adequate non-confidential version of the response that complies with the rules set out under the heading *Confidential Information* will be regarded as an incomplete submission.

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 information regarding this matter and any arguments concerning the allegation of dumping and the resulting material injury and/or 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 (UZAJI) –The DTI Campus
77 Meintjies Street
SUUNYSIDE
PRETORIA
SOUTH AFRICA

Postal address

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

Enquiries may be directed to the investigating officers, Mr A Strydom at (012) 394 3597 or Mr Z Ntsangani at telephone (012) 394 3662, or at fax (012) 394 0518.