

NOTICE 1149 OF 2009**INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF AN INTERIM REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTY ON FRESH OR CHILLED GARLIC ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA (PRC)**

The International Trade Administration Commission of South Africa (the Commission) received an application for an interim review of the anti-dumping duty on fresh or chilled garlic originating in or imported from the People's Republic of China as a result of changed circumstances in respect of dumping and material injury since the last review.

THE APPLICANT

The application was lodged by Dumping Remedy Services CC on behalf of the South African Garlic Grower's Association (SAGGA), (the Applicant), being the farmer's representative organization for the subject product (Garlic) in the SACU. SAGGA members are producers of 100% of the SACU production by volume. The Applicant alleged that as a result of changed circumstances, the current anti-dumping duty is not sufficient to counter the injury caused to the SACU industry. The Applicant requests the Commission to consider increasing the current anti-dumping duty to a level that is adequate to enable the SACU industry to compete with imports from PRC at a profitable and sustainable level.

THE PRODUCT

The subject product is garlic, fresh or chilled classifiable under tariff subheading 0703.20, including dried garlic in the form of cloves or bulbs classifiable under tariff subheading 0712.90. The subject product is originating in or imported from the PRC. Dehydrated garlic and processed garlic are not included.

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 Anti-Dumping Regulations.

THE ALLEGATION OF CHANGED CIRCUMSTANCES

The Applicant alleges significant changed circumstances with reference to dumping and material injury. The Applicant further alleges that the current anti-dumping duty is not sufficient to counter the injury caused to the SACU industry from dumped imports originating from the PRC.

The Applicant alleges that there was a significant increase of imports from the PRC at decreasing prices to a level where the landed cost is significantly below the cost of production of the SACU industry.

The Commission considered that the Applicant submitted sufficient evidence of significantly changed circumstances as contemplated in Article 45.1 of the Anti-Dumping Regulations (ADR 45.1)

THE ALLEGATION OF DUMPING

The Applicant could not obtain domestic price information from the PRC and therefore nominated Mexico as a surrogate country. The normal value was based on published prices in Mexico, 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 it is suffering material injury in the form of price undercutting, price suppression, a decline in sales, profit margin, output, market share, productivity and capacity utilisation, employment and wages. It further indicated that there is a negative effect on its cash flow, growth, and the ability to raise capital. It was also evident that the decrease in market share has been at the expense 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

PERIOD OF INVESTIGATION

The investigation period for dumping is from 1 March 2008 to 28 February 2009, and the injury investigation involves evaluation of data for the period 1 March 2006 to 28 February 2009.

PROCEDURAL FRAMEWORK

Having decided that there is a *prima facie* case to justify initiation of the interim review investigation, the Commission decided to initiate 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) 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, 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.*

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 circumvention, and the resulting 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 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. Albert Strydom at +27 12 394 3597 and Mr. Edwin Mkwanazi at +27 12 394 3742 or at fax +27 12 394 0518.