NOTICE 399 OF 2010

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITITATION OF A SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON ACETAMINOPHENOL ORIGINATING IN OR IMPORTED FROM PEOPLE'S REPUBLIC OF CHINA (THE PRC) AND THE UNITED STATES OF AMERICA (THE USA)

In accordance with the provisions of Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their 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 be likely to lead to continuation or recurrence of dumping and material injury.

On 26 June 2009, the International Trade Administration Commission of South Africa (the Commission) notified the interested parties through Notice No. 902 of 2009 in Government Gazette No. 32333, that unless a substantiated request is made indicating that the expiry of the anti-dumping duties against imports of acetaminophenol originating in or imported from the PRC and USA would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on acetaminophenol originating in or imported from People's Republic of China and the United States of America would expire on 14 July 2010.

A response to the sunset review application questionnaire was received from Fine Chemicals Corporation (Pty) (Ltd) on behalf of the South African Customs Union (SACU) industry on 21 December 2009.

THE APPLICANT

The application was lodged by FC Dubbelman & Associates CC on behalf of Fine Chemicals Corporation (Pty) (Ltd), the sole producer of Acetaminophenol within the SACU.

The Applicant alleges that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and the recurrence of material injury. The Applicant submitted sufficient evidence and established a *prima facie* case to enable the Commission to arrive at a reasonable conclusion that a sunset review investigation should be initiated.

THE PRODUCT

The products allegedly being dumped is Acetaminophenol classifiable under tariff subheading 2924.29.05 originating in or imported from People's Republic of China and the United States of America.

THE ALLEGATION OF THE CONTINUATION OR RECURRENCE OF DUMPING

The allegation of continuation or recurrence of dumping is based on the comparison between the normal values and the export prices.

The Applicant obtained market information that acetaminophenol is being sold in the USA between $7 and $10 per kilogram. This information is supported by report published by Innovation Group which indicates that current (2003) domestic pricing in the USA was between $8.15 and $8.55 per kg. The USA Production Price Index was used to adjust this price to a 2009 price and a normal value of $11.26 per kilogram was calculated. However, the Applicant decided to use the bulk volume price of $8.50 per kilogram as it is of the opinion that this is a fair price.

The normal value for the PRC is based on the third country being the USA as the information on domestic prices in the PRC was not available. Accordingly a normal value for the PRC of $8.50 was calculated.

As the export volume from the USA and China were very small the Applicant stated that it does not believe the FOB values depicted in the SARS import data are not a true reflection of the actual prices. Therefore export quotes were obtained for products originating in the USA and China.

On this basis, the Commission found that there was *prima facie* proof of the likelihood of continuation or recurrence of dumping if the duties expire.

THE ALLEGATION OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY

The Applicant alleges and submitted *prima facie* evidence to show that there would be price undercutting and that the imports in question are depressing and suppressing its selling prices. The Applicant's information indicated that it would experience a decline in sales, profit margins, production, market share, capacity utilisation, return on investment and it will have a negative impact on cash flow, if the duties expire.

On this basis the Commission found that there was *prima facie* proof of the recurrence of material injury.

PERIOD OF INVESTIGATION

The investigation period for dumping is from 01 January 2009 to 31 December 2009, and the injury investigation involves evaluation of data for the period of 01 July 2007 to 30 June 2009. The Commission will also consider an estimate of what the situation will be, if the anti-dumping duties expire.

PROCEDURAL FRAMEWORK

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of a sunset review 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) 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 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:

- 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 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)(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 1
International Trade Administration Commission
Block E –Uuzaji Building
77 Meintjies Street
SUNNYSIDE
PRETORIA
SOUTH AFRICA

Postal address

The Senior Manager:
Trade Remedies 1
Private Bag X753
PRETORIA
0001
SOUTH AFRICA

PROCEDURES AND TIME LIMITS

The Senior Manager: Trade Remedies 1, 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 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 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, within a short period after the submission of 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. 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. 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 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 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.

Should you have any queries, please do not hesitate to contact investigating officers, Ms Selma Takács at telephone number +27 12 394 3596 or Mr. Emmanuel Makwela at telephone number +27 12 394 3632 or at fax number +27 12 394 0518.