

**NOTICE 866 OF 2012****INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF THE SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON GARDEN PICKS & SPADES, SHOVELS, RAKES AND FORKS ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA (PRC)**

In accordance with the provisions in Article 53.1 of the Anti-Dumping Regulations (ADR), any definitive anti-dumping duty shall be terminated on a date not later than five years from the date of imposition, unless the International Trade Administration Commission (the Commission) determines, in a review initiated before that date on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, that the expiry of the duty would likely lead to continuation or recurrence of dumping and material injury.

On 27 May 2011 the Commission notified the interested parties through Notice No.308 of 2011 in Government Gazette No. 34307, that unless a substantiated request is made indicating that the expiry of the anti-dumping duties against imports of garden picks, spades & shovels, forks and rakes originating in or imported from the People's Republic of China (PRC) would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on garden picks, spades & shovels, forks and rakes originating in or imported from the PRC would expire on 01 November 2012.

A response to the sunset review application questionnaire was received from Ussher Inventions (Pty) Limited trading as Lasher Tools on behalf of the Southern African Customs Union (SACU) industry on 1 June 2012.

The Applicant alleges that the expiry of the duties would likely lead to continuation or recurrence of dumping and the continuation or 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 APPLICANT

The application was lodged by Ussher Inventions (Pty) Limited trading as Lasher Tools (the Applicant), the major producer of spades & shovels, forks and rakes and the only producer of picks within the SACU.

## THE PRODUCTS

The products allegedly being dumped are picks, spades & shovels, forks and rakes originating in or imported from the PRC and classifiable under the following tariff sub-headings:

| Product          | Tariff subheading |
|------------------|-------------------|
| Spades & Shovels | 8201.10.10        |
| Forks            | 8201.90.20        |
| Picks            | 8201.30.03        |
| Rakes            | 8201.30.90        |

## 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 domestic price quotations from the PRC to calculate normal values for picks, spades & shovels, forks and rakes. The Applicant used SARS import statistics to determine the export prices for picks, spades & shovels, forks and rakes from the PRC. The dumping margins were calculated as follows:

| RMB/Unit       | Spades & shovels | Picks | Rakes | Forks |
|----------------|------------------|-------|-------|-------|
| Dumping Margin | 52.1%            | 73.3% | 32.1% | 25.9% |

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 it would experience a decline in sales, production, market share, capacity utilisation, productivity employment and growth if the duties expire. The Applicant's information further indicated that it will make losses, have negative net cash inflows, a further increase in inventories and will not be able to raise capital or obtain any investments if the duties expire.

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

#### PERIOD OF INVESTIGATION

The investigation period for dumping is from 01 July 2011 to 30 June 2012 and the injury investigation involves evaluation of data for the period of 01 July 2008 to 30 June 2011 and 2012 budgeted figures. 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 and the 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 its investigation, the Commission will send non-confidential versions of the application and questionnaires to all known importers and known representative associations. Known foreign producers of garden picks, spades & shovels, forks and rakes and the trade representative of the country of origin have also been notified, and have been requested to advise other possible foreign producers accordingly.

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 the continuation or recurrence of dumping and the resulting continuation or recurrence of material injury must be submitted in writing to the following address:

### Physical address

Senior Manager: Trade Remedies I  
International Trade Administration Commission  
**Block E – The DTI Campus**  
77 Meintjies Street  
SUNNYSIDE  
PRETORIA  
SOUTH AFRICA

### Postal address

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

## 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 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 an extension. Please note that the Commission will not consider requests for extension by the Embassy on behalf of foreign producers.

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. Specifically, it is planned to verify the information submitted by foreign producers 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 appointed representatives, will not be considered to be good cause.

Parties should also ensure when they engage representatives 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 ITA Act and the ADR. 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. 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 information in the format required, are 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 the written submissions 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 must provide the Commission with a detailed agenda for, and a detailed hard copy 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 is 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 the investigating officers, Ms Selma Takács at +27 12 394 3596, Mr. Andre Zietsman at +27 394 3673, Mr. Emmanuel Manamela at +27 12 394 3632 and Ms Mosa Sebe at 012 394 3173 or at fax number +27 12 394 0518.