

NOTICE 955 OF 2012**INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF AN INITIATION OF THE INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF FROZEN POTATO CHIPS**

The International Trade Administration Commission of South Africa (the Commission) decided to proceed with an investigation for remedial action against the increased imports of frozen potato chips.

Based on the information submitted, the Commission decided that *prima facie* information was submitted to indicate that a recent, sudden, sharp and significant surge in imports has taken place and is causing serious injury to the Southern African Customs Union (SACU) industry.

THE APPLICANT

The application was lodged by McCain (SA) (Pty) Ltd, a major producer of frozen potato chips in the SACU supported by Nature's Choice Products (Pty) Ltd and Lamberts Bay Foods.

A non-confidential version of the application is available for inspection at the Commission's offices.

DESCRIPTION OF THE SUBJECT PRODUCT UNDER INVESTIGATION

The subject product is described as frozen potato chips (scientific name) or commonly known (in South Africa) as slap chips or french fries/pommes frites/chips (trade name), classifiable under tariff subheading 2004.10.90.

DESCRIPTION OF THE LIKE OR DIRECTLY COMPETITIVE SACU PRODUCT

The SACU product is described as frozen potato chips (scientific name) or commonly known (in South Africa) as slap chips or french fries/pommes frites/chips (trade name).

ALLEGATION OF SERIOUS INJURY AND CAUSAL LINK

The Applicant alleges and submitted *prima facie* information indicating that it is experiencing serious injury in the form of a decline in sales volume, output, market share, productivity and capacity utilisation. It further alleges that it is experiencing an increase in losses in light of the recent, sudden, sharp and significant surge in imports.

The Applicant further alleges that there is an oversupply of frozen potato chips in the world market, that there is a recent, sudden, sharp and significant surge in imports of frozen potato chips and that they are exported to the SACU at prices which will have a significant depressing and a further suppressing effect on the Applicant's prices.

It further alleges that the significant increase in the market share of the imported frozen potato chips in the SACU has been at the expense of a corresponding decrease in the SACU industry's market's share.

On this basis the Commission found that *prima facie* information was submitted to indicate that the SACU industry was suffering serious injury which could be causally linked to the recent, sudden, sharp and significant surge in imported frozen potato chips.

UNFORESEEN DEVELOPMENTS

The Applicant indicated that the expansion of capacity in the EU, the financial crisis which resulted in the oversupply of frozen potato chips in the world market and an aggressive export strategy by the EU producers of frozen chips augmented by the absence of sufficient duty protection as a result of the TDCA culminated in circumstances that occurred after the negotiation of the relevant tariff concessions

“could not have been foreseen at the time the concessions were negotiated” in accordance with Article XIX of the GATT.

PROCEDURAL FRAMEWORK

This investigation will be conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the World Trade Organization Agreement on Safeguards (the Safeguard Agreement) and the International Trade Administration Commission Safeguard Regulations (SGR).

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:

- 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.

ADDRESS

Any information regarding this matter must be submitted in writing to the following address:

Physical address

Senior Manager: Trade Remedies 1
International Trade Administration Commission
Block E – The DTI Campus
77 Meintjies Street
SUNNYSIDE
PRETORIA
SOUTH AFRICA

Postal address

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

PROCEDURES AND TIME LIMITS

Interested parties are invited to submit comments on the initiation of the investigation.

All information submitted, including non-confidential copies thereof, should be received by the Senior Manager: Trade Remedies 1 by no later than 20 days from the date hereof. Late submissions will not be accepted.

Any interested party may request an oral hearing provided that reasons are given for not relying on written submissions only. No request for an oral hearing will be considered more than 60 days from the date of this publication. The Commission may refuse an oral hearing if granting such hearing will unduly delay the finalisation of the investigation.

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.

Should you have any queries, please do not hesitate to contact the investigating officers Mr. Elias Tema at telephone number +27 12 394 3640 or Mr. Busman Makakola at +27 12 394 3880 and Ms. Mosa Sebe at +27 12 394 3173 or at fax number +27 12 394 0518.