

NOTICE 1128 OF 2013**INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF GRAPHITE ELECTRODES FOR USE IN FURNACES ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA (CHINA) AND INDIA**

The International Trade Administration Commission of South Africa (the Commission) accepted an application alleging that graphite electrodes for use in furnaces originating in or imported from the People's Republic of China (China) and India is being dumped on the South African Customs Union (SACU) and causing material injury to the SACU industry concerned. The Applicant submitted sufficient evidence and established a *prima facie* case to enable the Commission to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, material injury and causality.

THE APPLICANT

The application was lodged by GrafTech South Africa (Pty) Ltd.

THE PRODUCT

The product allegedly being dumped is graphite electrodes for use in furnaces, classifiable under tariff subheading 8545.11, originating in or imported from China and India.

THE ALLEGATION OF DUMPING: PEOPLE'S REPUBLIC OF CHINA (CHINA)

The allegation of dumping is based on the comparison between the normal value, being highest comparable price of the like product when exported to an appropriate third or

surrogate country and the export price from China.

The domestic selling price for China was determined based on the export price from China to the United States of America (USA). An adjustment for transport was made to arrive at the net ex-factory normal value. The export price for China was determined based on the official South African Revenue Service (SARS) statistics. An adjustment for freight was made to the f.o.b. import price to calculate the ex-factory export price. The dumping margin for China was determined to be 338.57%. On this basis, the Commission found that there was a *prima facie* proof of dumping.

THE ALLEGATION OF DUMPING: INDIA

The allegation of dumping is based on the comparison between the normal value, being highest comparable price of the like product when exported to an appropriate third or surrogate country and the export price from India.

The domestic selling price for India was determined based on the export price from India to Canada. An adjustment for transport was made to arrive at the net ex-factory normal value. The export price for India was determined based on the official South African Revenue Service (SARS) statistics. An adjustment for freight was made to the f.o.b. import price to calculate the ex-factory export price. The dumping margin for India was determined to be 16.28%. On this basis, the Commission found that there was a *prima facie* proof of dumping.

THE ALLEGATION OF MATERIAL INJURY AND CAUSAL LINK

The Applicant submitted evidence to show that there is price undercutting and price suppression. The Applicant's information indicated a decline in sales volumes, profit, as well as a negative effect on cash flow, output, return on investment, ability to raise capital or investment and employment. The Applicant further submitted evidence indicating a decline in productivity, capacity utilisation and market share.

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

PERIOD OF INVESTIGATION

The period of investigation for purposes of determining the dumping in the exporting countries of origin will be from 1 May 2012 to 30 April 2013. The period of investigation for purposes of determining material injury will be from 1 May 2010 to 30 April 2013.

PROCEDURAL FRAMEWORK

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of an 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 Commission's Anti-Dumping Regulations (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 representatives of the exporting countries have 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, material injury and the resulting threat of material injury must be submitted in writing to the following address:

Physical address

The Senior Manager: Trade Remedies I

The International Trade Administration
Commission of South Africa

Block E – Uuzaji Building

The DTI Campus

Postal address

The Senior Manager: Trade Remedies I

The International Trade Administration
Commission of South Africa

Private Bag X753

Pretoria

77 Meintjies Street 0001
SUNNYSIDE SOUTH AFRICA
PRETORIA
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 an extension. Please note that the Commission will not consider requests for extension by Embassies 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 will subsequently be available for verification. Specifically, it is planned to verify the information submitted by the exporters within three to five weeks subsequent to the 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 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. A failure to submit an adequate a 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 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 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 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.

Enquiries may be directed to the investigating officers, Ms Regina Peta at telephone +27 12 394-3737 or Mr B. Makakola at telephone +27 12 394-3880 or at fax +27 12 394-0518.