

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NOTICE 674 OF 2021****INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM, GERMANY AND THE NETHERLANDS**

The International Trade Administration Commission of South Africa (the Commission) has decided to initiate an investigation into the alleged dumping of frozen potato chips originating in or imported from Belgium, Germany and the Netherlands, causing material injury to the Southern African Customs Union (SACU) industry.

The Commission decided to self-initiate the investigation in terms of Regulation 3.3 of the Anti-Dumping Regulations (ADR), having gathered sufficient evidence to establish a *prima facie* case based on dumping, material injury and causality.

THE PRODUCT

The product allegedly being dumped is frozen potato chips, classifiable under tariff subheadings 2004.10.2 and 2004.10.29, originating in or imported from Belgium, Germany and the Netherlands.

THE ALLEGATION OF DUMPING

The allegation of dumping is based on the comparison between the normal values and the export prices from Belgium, Germany and the Netherlands, respectively.

The normal values for Belgium and the Netherlands were determined based on the verified price information from cooperating exporters in the previous sunset review (Sunset Review of Frozen Potato Chips from Belgium and the Netherlands). The normal values were weighted based on the respective volumes sold by each exporter in Belgium and the Netherlands.

Being historical prices, the weighted average prices were adjusted for inflation using consumer price index data information compiled by the respective government authorities in both countries tasked with calculating this data.

The normal value for Germany was determined based on the prices of online domestic sales of the subject product in Germany. Falling outside the period of investigation for dumping, the normal value for Germany was also adjusted for inflation using consumer price index data compiled by the government authority tasked with calculating this data.

The export prices for all three countries were based on official import statistics obtained from the South African Revenue Service.

Based on a comparison of the respective normal values and export prices, the Commission found that there was *prima facie* evidence of dumping and calculated the following margins:

Country	Dumping margin
Belgium	11.75%
Germany	190.23%
The Netherlands	83.22%

THE ALLEGATION OF MATERIAL INJURY AND CAUSAL LINK – CUMULATIVE ASSESSMENT

There are three countries involved in this investigation, namely Belgium, Germany and the Netherlands. In terms of the ADR16.3, the Commission may cumulatively assess the effect of the dumped imports only if it finds that cumulating is appropriate. In light of the information available, the Commission decided to do a cumulative assessment of the effect of the dumped imports from Belgium, Germany and the Netherlands.

MATERIAL INJURY

The material injury information gathered by the Commission provides evidence to show that the volume of imports have increased and that the industry is experiencing price undercutting and price suppression, as well as an impact in terms of a decline in sales and production volumes; negative net cash flow; a decline in return on investment; a decline in capacity utilisation; a decline in profits, a decline in market share; a decline in employment and negative growth.

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

CAUSAL LINK

The Commission found that there is *prima facie* evidence of a causal link between the alleged dumped imports and the material injury suffered by the SACU industry.

PERIOD OF INVESTIGATION

The period of investigation for purpose of determining the dumping margins is from 01 July 2020 to 30 June 2021. The period of investigation for purposes of determining the material injury is from 01 July 2018 to 30 June 2021.

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 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.

PROCEDURES AND TIME FRAMES

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to all known importers and exporters and known representative associations, and will provide all a non-confidential version of the information in support of the *prima facie* case. The trade representatives of Belgium, Germany and The Netherlands 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.

The Senior Manager: Trade Remedies II 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-days 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 an 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 (or online) 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 ITA Act, ADR, having regard to 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 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 ADR5, 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 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.

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, a sworn affidavit setting out the reasons why it is impossible to comply should be provided.

A sworn affidavit is defined as a written sworn statement of fact voluntarily made by an affiant or deponent under an oath or affirmation administered by a person authorized to do so by law. Such statement is witnessed as to the authenticity of the affiant's signature by a taker of oaths, such as a notary public or commissioner of oaths. An affidavit is a type of verified statement or showing, or in other words, it contains verification, meaning it is under oath or penalty of perjury and this serves as evidence to its veracity and is required for court proceedings.

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 material injury or threat of material injury must be submitted in writing to the following address:

Physical address

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

Postal address

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

The responses and enquiries may also be directed to the investigating officers, Mr. Pfananani Muumba at email address: rmuumba@itac.org.za or Mr. Sandile Mantolo at email address: smantolo@itac.org.za.