

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION
GENERAL NOTICE 2731 OF 2024
INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED CIRCUMVENTION OF THE ANTI-DUMPING MEASURES ON NEW PNEUMATIC TYRES OF RUBBER OF A KIND USED ON MOTOR CARS (CLASSIFIABLE UNDER TARIFF SUBHEADINGS HS 4011.10.01, HS 4011.10.03, HS 4011.10.05, HS 4011.10.07, AND HS 4011.10.09) AND ON BUSES OR LORRIES (CLASSIFIABLE UNDER TARIFF SUBHEADINGS HS 4011.20.16, HS 4011.20.18, AND HS 4011.20.26) THROUGH COUNTRY HOPPING FROM THE PEOPLE'S REPUBLIC OF CHINA VIA THE KINGDOM OF CAMBODIA, THE KINGDOM OF THAILAND, AND THE SOCIALIST REPUBLIC OF VIETNAM

The International Trade Administration Commission of South Africa (the Commission) received and accepted an application alleging that circumvention of anti-dumping measures on new pneumatic tyres of rubber of a kind used on motor cars and on buses or lorries, originating in or imported from the People's Republic of China (PRC) is taking place, through country hopping from the PRC to and/or via the the Kingdom of Cambodia (Cambodia), the Kingdom of Thailand (Thailand), and the Socialist Republic of Vietnam (Vietnam).

The Applicant submitted sufficient evidence and established a *prima facie* case of country hopping and material injury to enable the Commission to decide that an investigation should be initiated.

THE APPLICANT

The application was lodged by South African Tyre Manufacturing Conference (SATMC), an industry body or trade association of the SACU industry. The SATMC members are Bridgestone South Africa (Pty) Ltd, Continental Tyre South Africa (Pty) Ltd, Goodyear South Africa (Pty) Ltd, and Sumitomo Rubber South Africa (Pty) Ltd, together constitute 100 percent of the domestic production of the subject products in SACU.

THE SUBJECT PRODUCT

The imported products whose anti-dumping measures are allegedly being circumvented are new pneumatic tyres of rubber of a kind used on motor cars (classifiable under tariff subheadings HS 4011.10.01, HS 4011.10.03, HS 4011.10.05, HS 4011.10.07, and HS 4011.10.09) and on buses or lorries (classifiable under tariff subheadings HS 4011.20.16, HS 4011.20.18, and HS 4011.20.26) originating in or imported from Cambodia, Thailand, and Vietnam.

THE ALLEGATION OF CIRCUMVENTION**Country Hopping in terms of ADR62.8**

The Applicant alleged that subsequent to the imposition of the provisional measures and the imposition of definitive anti-dumping duties on imports of new pneumatic tyres of rubber of a kind used on motor cars and on buses or lorries, originating in or imported from the PRC, Chinese exporters have shifted exporting of the subject products from the PRC to some of their related companies in Cambodia, Thailand, and Vietnam.

The Applicant provided a list of related companies of the Chinese exporters that were identified in the original investigation and are alleged to have a footprint in Cambodia, Thailand, and Vietnam through operational and/or ownership linkages. The Applicant believes that this relatedness, coupled with the impositions of the provisional measures and definitive anti-dumping duties, directly contributed to the change in pattern of trade through activities, work or processes such as export channelling, and undermines the remedial effects of the anti-dumping measure.

Change in pattern of trade in terms of ADR60.1(a)

The Applicant further provided import volumes from the South African Revenue Service (SARS) to substantiate its claim of country hopping.

The analysis of import volumes and Bills of Entry from SARS, pre and post the imposition of the provisional payments and pre and post the imposition of definitive anti-dumping duties, shows that there is a change in the pattern of trade for the PRC, Cambodia, Thailand, and Vietnam. The analysis show that the change in pattern of trade through a decreasing trend for the PRC is accompanied by the change in pattern of trade through an increasing trend for Cambodia, Thailand, and Vietnam, and that trends coincides with the timing of provisional measures and definitive anti-dumping duties. The Commission considered that this points to insignificant or no economic justification but to the impositions of provisional measures and definitive anti-dumping duties.

On this basis, the Commission found that there is *prima facie* proof of a change in the pattern of trade, which results from a practice, process or work that constitute country hopping, and for which there is no or insufficient cause or economic justification other than the imposition of the provisional payments and definitive anti-dumping duties.

Undermining the remedial effects in terms of ADR60.1(b)

The analysis shows that there are significant increases in import volumes from Cambodia, Thailand, and Vietnam, which coincided with decreases in import volumes from the PRC. On this basis, the Commission found that there is *prima facie* proof that the remedial effects of the provisional payments were undermined and continue to be undermined in terms of the volumes after the imposition of the definitive anti-dumping duties.

The existence of dumping in terms of ADR60.1(c)

Dumping is based on the comparison between the normal value previously established in the original investigation in accordance with ADR 62.3 and the export price derived from the import statistics obtained from the SARS. On this basis, the dumping margins were determined to be 21 percent for Cambodia, 68 percent for Thailand, and 84 percent for Vietnam. Therefore, the Commission found that there is *prima facie* proof

that dumping of the subject product from Cambodia, Thailand, and Vietnam, exists in relation to the normal values previously established for the subject products in the original anti-dumping investigation.

Based on the three conditions as per ADR 60.1, the Commission found that there was *prima facie* evidence to indicate that country hopping, in terms of ADR 60.8, is taking place.

THE ALLEGATION OF MATERIAL INJURY

According to ADR62.2 the SACU industry shall not be required to update its injury information, provided that an anti-circumvention application is lodged with the Commission prior or within one year of the publication of the Commission's final determination.

In this regard, the application was lodged within one of the publication of the Commission's final anti-dumping duties. Therefore, the Commission considered the material injury information previously established in the original investigation for purposes of initiation.

Based on the information submitted and considered by the Commission in the original investigation, the Commission found that there was *prima facie* evidence that the SACU industry is experiencing material injury and a threat of material injury as result of the subject products from Thailand, Vietnam, and Cambodia.

PERIOD OF INVESTIGATION

Dumping: 01 November 2023 to 31 May 2024.

Circumvention: - 01 March 2022 to 30 September 2022 **vs** 01 October 2022 to 30 April 2023; and
- 01 April 2023 to 31 October 2023 **vs** 01 November 2023 to 31 May 2024

LEGAL 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, the Commission's Anti-Dumping Regulations (ADR) and giving due regard to the World Trade Organisation Agreement on Implementation of Article VI of the GATT 1994.

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.

RESPONSE PROCEDURE AND TIME FRAMES

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 Cambodia, Thailand and Vietnam had 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 contact ITAC to 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. 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 the Embassy of the representative country 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 verification 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 requirements of the ITA Act and the ADR (and giving due regard to the WTO 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 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 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, 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 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

Should you have any queries, please do not hesitate to contact the investigating officers Mr. Sandile Mantolo at email address: smantolo@itac.org.za or Ms. Millicent Baloyi at email address: mbaloyi@itac.org.za and Ms. Phindile Mabona at email address: pmabona@itac.org.za