

NOTICE 675 OF 2014

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF PORTLAND CEMENT CLASSIFIABLE UNDER TARIFF SUBHEADING 2523.29 ORIGINATING IN OR IMPORTED FROM PAKISTAN

The International Trade Administration Commission of South Africa (the Commission) accepted an application alleging that Portland cement classifiable under tariff subheading 2523.29 originating in or imported from Pakistan is being dumped on the Southern African Customs Union (SACU) market, 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/or threat of material injury and causality.

THE APPLICANT

The application was lodged by Afrisam (South Africa) (Proprietary) Limited, Lafarge Industries South Africa (Proprietary) Limited, NPC Cimpor (RF) (Proprietary) Limited and PPC Limited (the Applicant).

THE PRODUCT

The product allegedly being dumped is Portland cement classifiable under tariff subheading 2523.29 originating in or imported from Pakistan.

THE ALLEGATION OF DUMPING

The allegation of dumping is based on the comparison between the normal value in Pakistan and the export price from Pakistan.

The domestic selling price for Pakistan was determined based on a report by Genesis Analytics titled "Pakistan cement price data for January 2013 to December 2013". The export price for Pakistan was determined based on the official South African Revenue Service (SARS) import statistics. The dumping margin for Pakistan was determined to be 48%. On this basis, the Commission found that there was a *prima facie* proof of dumping.

THE ALLEGATION OF MATERIAL INJURY, THREAT OF MATERIAL INJURY AND CAUSAL LINK

The Application was brought on “Portland Cement” – whether in “bulk” or “bagged cement”, and although the Applicant provided injury information for the subject product, being “Portland cement” it requested the Commission to focus the analysis of injury on “bagged cement” due to the following reasons:

- The product, Portland cement classifiable under tariff heading 2523.29 originating from Pakistan, is imported in bag form only. There are no bulk cement imports from Pakistan. This is because it would be prohibitively expensive to import the product in any form other than in bagged form.
- There are two separate and distinct markets for ordinary Portland cement, namely, the market for bagged cement and the market for bulk cement. The bagged cement market comprises the major portion of the combined bag and bulk cement market (comprising the SACU industry). The purpose for which bagged cement and bulk cement are used differ. Bulk cement is used in large construction projects and sold to concrete product manufacturers, ready mix producers and blenders while bagged cement is mainly used in small construction projects. Bagged customers are mainly retailers which on-sell to customers for small projects. It is therefore in the bagged cement market where Pakistani imports compete with the domestic industry and where the domestic industry is suffering material injury as clearly demonstrated in the injury information furnished. The injury information also demonstrates that injury in the bagged cement market is even higher in the areas close to the Ports of entry for Pakistan imports, particularly in KwaZulu-Natal, the Eastern and the Western Cape because of transportation costs.
- Because the dumped imports of bagged Pakistani cement do not compete in the bulk cement market, the bulk cement market is not as severely affected by those imports. Whilst the material injury reflected in the combined bulk and bag market is accordingly diluted, the material injury caused to the SACU Industry is nevertheless significant. The loss of market share of bagged cement both volume and value, has impacted negatively on the profitability of the SACU Industry, plant utilization and economies of scale.

The Applicant's information indicated a decline in sales volumes, profit, output, utilisation of production capacity and market share, as well as a negative effect on cash flow, return on investment and employment.

The Commission further noted that the Applicant lost market share in a growing market, whilst the market share of imports increased over the period of investigation.

The Applicant further alleged that a threat of material injury exists and submitted evidence with regard to the freely disposable capacity of the exporters; the significant increase of the alleged dumped imports; and the state of the economy in Pakistan.

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

PERIOD OF INVESTIGATION

The period of investigation for purposes of determining the dumping in the country of origin will be from 1 January 2013 to 31 December 2013. The period of investigation for purposes of determining material injury and/or a threat of material injury will be from 1 January 2010 to 31 December 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 representative of the exporting country has 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
77 Meintjies Street
SUNNYSIDE
PRETORIA
SOUTH AFRICA

Postal address

The Senior Manager: Trade Remedies I
The International Trade Administration
Commission of South Africa
Private Bag X753
Pretoria
0001
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 40 days from the date hereof, or not later than 30 days 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 deadline. 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, Mr Zuko Ntsangani at telephone +27 12 394 3662, Ms Charity Ramaposa at 012 394 1817 or Mr Busman Makakola at telephone +27 12 394 3380 or at fax +27 12 394 0518.