

NOTICE 712 OF 2010

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITIATION OF THE SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON POLYETHYLENE TEREPHTHALATE (PET) ORIGINATING IN OR IMPORTED FROM INDIA, SOUTH KOREA AND CHINESE TAIPEI

In accordance with the provisions in Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, and definitive anti-dumping duty shall be terminated on a date not later than five years from the date of imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, that the expiry of the duties would be likely to lead to continuation or recurrence of dumping and injury.

On 26 June 2009 the International Trade Administration Commission of South Africa (the Commission) notified the interested parties through Notice No.902 of 2009 in *Government Gazette* No. 32333, that unless a substantiated request is made indicating that the expiry of the anti-dumping duty against imports of polyethylene terephthalate originating in or imported from South Korea, Chinese Taipei and India would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duty on polyethylene terephthalate (PET) originating in or imported from India, South Korea and Chinese Taipei will expire on 06 October 2010.

A response to the review questionnaire was received from the Applicant on 6 April 2010.

THE APPLICANT

The application was lodged by FC Dubbelman & Associates CC on behalf of Hosaf, a Division of Feltex Holdings (Pty) Ltd (Hosaf), being the only producer for the subject product (PET) in the SACU. The Applicant alleges that the expiry of the duties would likely lead to the continuance and recurrence of dumping and injury.

The Applicant submitted sufficient evidence and established a *prima facie* case to enable the Commission to arrive at a reasonable conclusion that a sunset review investigation should be initiated.

THE PRODUCT

The product allegedly being dumped is polyethylene terephthalate (PET), bottle-grade resin having an intrinsic viscosity (IV) of greater than 0.68 deciliters per gram, classifiable under tariff subheading 3907.60, originating in or imported from the India, South Korea and Chinese Taipei.

THE ALLEGATION OF THE CONTINUATION OR RECURRENCE OF DUMPING INDIA

The allegation of dumping is based on the comparison between the normal value in India and the export price information supplied by the Applicant.

NORMAL VALUE

The normal value for the subject product was determined based on domestic price information obtained by the Applicant from an international publication.

EXPORT PRICE

The Applicant indicated that as a result of the current anti-dumping duties, imports from India have declined and the volumes are not a true reflection of the current situation.

It also stated that it believes that the SARS data might be distorted and different grades of PET could be included in the import statistics, which might in turn lead to price variation. The export price was, therefore, determined based on the information supplied by the Applicant obtained from an international publication.

On this basis, the Commission found that there was *prima facie* evidence that the expiry of the anti-dumping duties on the subject product originating in or imported from India is likely to lead to the continuation or recurrence dumping.

SOUTH KOREA

The allegation of dumping is based on the comparison between the normal value in South Korea and the export price information supplied by the Applicant.

NORMAL VALUE

The normal value for the subject product was determined based on domestic price information obtained by the Applicant from an international publication.

EXPORT PRICE

The Applicant indicated that as a result of the current anti-dumping duties, imports from South Korea have declined and the volumes are not a true reflection of the current situation. It also stated that it believes that the SARS data might be distorted and different grades of PET could be included in the import statistics, which might in turn lead to price variation. The export price was, therefore, determined based on the information supplied by the Applicant obtained from an international publication.

On this basis, the Commission found that there was *prima facie* evidence that the expiry of the anti-dumping duties on the subject product originating in or imported from South Korea is likely to lead to the continuation or recurrence dumping.

CHINESE TAIPEI

The allegation of dumping is based on the comparison between the normal value in Chinese Taipei and the export price information supplied by the Applicant.

NORMAL VALUE

The normal value for the subject product was determined based on domestic price information obtained by the Applicant from an international publication.

EXPORT PRICE

The Applicant indicated that as a result of the current anti-dumping duties, imports from Chinese Taipei have declined and the volumes are not a true reflection of the current situation. It also stated that it believes that the SARS data might be distorted and different grades of PET could be included in the import statistics, which might in turn lead to price variation. The export price was, therefore, determined based on the information supplied by the Applicant obtained from an international publication.

On this basis, the Commission found that there was *prima facie* evidence that the expiry of the anti-dumping duties on the subject product originating in or imported from Chinese Taipei is likely to lead to the recurrence of dumping.

THE ALLEGATION OF RECURRENCE OF MATERIAL INJURY

The Applicant alleges and submitted sufficient evidence to show that there will be price undercutting and that the imports in question will be depressing and suppressing its selling price, should anti-dumping duties expire. The Applicant's information further indicated that it will experience a decline in sales volumes, profit, output, productivity, capacity utilisation, decrease in employment and growth and a further increase in inventories and return on investment.

On this basis, the Commission found that there was *prima facie* proof that the expiry of the anti-dumping duties on the subject product originating in or imported from India, South Korea and Chinese Taipei is likely to lead to the continuation or recurrence of material injury.

PERIOD OF INVESTIGATION

The period of investigation for purposes of determining the dumping margins in the respective exporting countries or countries of origin will be from 1 July 2009 to 31 January 2010. The period of investigation for purposes of determining injury will be from 1 July 2006 to 31 January 2010. An estimate of what the situation will be, should the anti-dumping expire, will also be considered by the Commission.

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 Anti-Dumping Regulations of the International Trade Administration Commission of South Africa (ADR), with due regard to the provisions of the World Trade Organisation Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement). 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 petition 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:

- X where confidential information has been omitted and the nature of such information;
- X reasons for such confidentiality;
- X a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information; and
- X 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 must be submitted in writing to the following address:

Physical address

The Senior Manager: Trade Remedies

International Trade Administration Commission

Postal address

The Senior Manager: Trade
Remedies I

Private Bag X753

Block E – The DTI Campus
77 Meintjies Street
SUNNYSIDE
PRETORIA
SOUTH AFRICA

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 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 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. 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 rules of 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 non-confidential version of the response that complies with the rules set out above under the heading *Confidential Information* may 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 Section 5 of the ADR, provided that the party indicates reasons for not relying on written submission 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.

Enquiries may be directed to the investigating officers, Mr. Zuko Ntsangani at telephone +27 12 394- 3662, Miss Regina Peta at telephone +27 12 394-3737 or fax number +27 12 394 0518.