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General Notice

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GENERAL NOTICE

NOTICE 907 OF 2008

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING AND SUBSIDISATION OF STAINLESS STEEL SINKS ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA (PRC) AND MALAYSIA.

The International Trade Administration Commission of South Africa (the Commission) accepted an application alleging that stainless steel sinks originating in or imported from the People's Republic of China (PRC) and Malaysia are being subsidised and dumped on the Southern African Customs Union (SACU) market, causing material injury to the SACU industry concerned.

THE APPLICANT

The application was lodged by Franke Kitchen Systems (Pty) Ltd, being the major manufacturer of the SACU like product. The Applicant alleges that it cannot compete with the low prices charged by the importers and that the allegedly dumped and subsidised products are causing it material injury. 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, subsidies, material injury and causality.

THE PRODUCT

The product allegedly being dumped and subsidised is stainless steel sinks and the tariff classification is 7324.10.

THE ALLEGATION OF DUMPING: PRC

The allegation of dumping is normally based on the comparison between the normal value and the export price in the country of origin.

The Applicant alleged that market conditions with regard to the supply of stainless steel in the PRC, are not according to free market principles. The stainless steel in the PRC is cheaper compared to that available on the international market. The Applicant alleges that as a result of this particular market situation in the PRC, the prices in that market do not permit a proper comparison. The normal value for the PRC was therefore based on the selling price of the product of a nominated third country i.e. Malaysia. The Applicant indicated that the stainless steel sink industries in Malaysia and the PRC are on the same level of development and the production processes for the manufacturing of stainless steel sinks in the PRC and Malaysia are the same.

The normal value for Malaysia was based on a price list of the subject product in Malaysia.

The export price was determined based on the official import statistics obtained from the South African Revenue Service. On this basis, the Commission found that there is a *prima facie* proof of dumping.

THE ALLEGATION OF DUMPING: MALAYSIA

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

The normal value for Malaysia was based on a price list indicating the domestic selling price to the wholesalers of the subject product in Malaysia. The export price was determined based on the official import statistics obtained from the South African Revenue Service. On this basis, the Commission found that there is *prima facie* proof of dumping

THE ALLEGATION OF SUBSIDISATION: PRC

The Applicant alleges that the manufacturers of the subject products in the PRC benefit from the following broad subsidy programmes:

- Special Economic Zone incentives;
- Grants provided for export performance and employing common workers;
- Preferential loans;
- Loan guarantee by the GOC;

- Grants;
- Preferential Income Tax Programs;
- Relief from duties and taxes on materials and machinery;
- Reduction in land use fees; and
- Purchase of Goods from State-owned Enterprises;

Special Economic Zone incentives

The Applicant alleges that the following subsidies are available to manufacturers operating in the special economic zone:

- Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area).
- Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones.
- Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.
- Preferential tax policies for enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone.
- Preferential tax policies in the Western regions.
- The Applicant further stated that it is also its understanding that the GOC may provide various benefits and incentives to enterprises in China located within SEZs.
- Tariff exemptions on imported materials.
- Reduction of corporate income tax.
- Value Added Tax (VAT) exemptions.
- Special land tax and land use exemptions.
- Preferential costs of services and infrastructure provided by government bodies or state-owned enterprises.
- Exemption/Reduction in Local Income tax for SEZ Enterprises; and
- Exemption of income tax from employing unemployed people.

Existence of a subsidy

In terms of Countervailing Regulation 8.1(ii), the abovementioned programmes constitute a subsidy, as government revenue that is otherwise due is foregone or not collected.

Countervailability of subsidy

The Applicant believes that the subsidies are limited to a group of enterprises, and are therefore countervailable.

Amount of subsidy

The applicant estimated that if a company makes use of all the subsidies, the overall margin of subsidization could be as high as 47.72%.

THE ALLEGATION OF SUBSIDISATION: MALAYSIA

The Applicant indicated that the manufacturers of the subject products in Malaysia benefit from the following subsidy programmes:

- Pioneer status
- Import duty exemption and sales tax exemptions
- Export credit refinancing program
- Industrial building allowance
- Double deduction for the promotion of exports and Investment Tax Allowance

Existence of a subsidy

In terms of Countervailing Regulation 8.1(ii), the abovementioned programmes constitute a subsidy, as government revenue that is otherwise due is foregone or not collected.

Countervailability of subsidy

According to information submitted, the benefits provided by the Malaysian government are alleged to be contingent upon export performance or limited to specific companies and therefore specific and countervailable.

Amount of subsidy

The Applicant estimated that if a company makes use of all the subsidies, the overall margin of subsidization could be as high as 35%.

THE ALLEGATION OF MATERIAL INJURY

The Applicant alleges and submitted sufficient evidence to show that there is price undercutting and that the imports in question are suppressing its selling prices. The Applicant's information indicated a decline in sales volumes, profit margins, output, market share, productivity, and return on investment, utilisation of capacity, cash flow, increased inventories and inability to grow. It was also evident that the decrease in market share has been at the expense of a corresponding increase in the market share of the allegedly dumped and subsidised goods from the PRC and Malaysia. 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 margins and subsidy margins in the respective exporting countries of origin is from 1 January 2007 to 31 December 2007. The period of investigation for purposes of determining injury is from 1 January 2005 to 31 December 2007. If there are subsequent events that are relevant to injury, the Commission may later request and consider further, more recent information.

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 World Trade Organisation Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement), Agreement on Subsidies and Countervailing Measures (SCM Agreement), the International Trade Administration Commission Countervailing Regulations (Countervailing Regulations) and the Anti-Dumping Regulations of the International Trade Administration Commission of South Africa (ADR).

The ITA Act, Countervailing Regulations 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, subsidisation and the resulting 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

PROCEDURES AND TIME LIMITS

All responses, including non-confidential copies of the responses, should be received by the Senior Manager: Trade Remedies II 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 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 above 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 Section 5 of the ADR, provided that the party indicates reasons for not relying on written the 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 officer Thuli Nkomo at
+27 12 394-3631.**
