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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE AND INDUSTRY

NO. 270

24 MARCH 2017

NOTICE OF INITIATION OF A SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES GALLUS DOMESTICUS IMPORTED OR ORIGINATING FROM THE UNITED STATES OF AMERICA

In accordance with the provisions in Article 53.1 of the Anti-Dumping Regulations, any definitive anti-dumping duty shall be terminated on a date not later than five years from its 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 within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and material injury to SACU industry.

On 24 June 2016 the Commission notified the SACU industry through Notice No. 365 of 2016 in Government Gazette No.40088 that unless a substantiated request is made by the SACU industry, indicating that the expiry of the anti-dumping duties on the subject product originating in the USA would likely lead to the continuation or recurrence of dumping and material injury. The relevant anti-dumping duties on the subject product originating in or imported from the USA would expire on 04 April 2017.

On 25 October 2016 the International Trade Administration Commission of South Africa (the Commission) received a sunset review application from the South African Poultry Association.

THE APPLICANT

The application was lodged by the South African Poultry Association, RCL Foods Pty Ltd and AFGRI Poultry (Pty) Ltd together they constitute 71.42 percent of SACU industry production of frozen bone in chicken portions from 01 July 2015 to 30 June 2016.

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 frozen bone-in portions of fowls of the species GALLUS DOMESTICUS, classifiable under the following tariff headings 0207.14.91(Whole bird cut-in half) 0207.14.93(leg quarters), 0207.14.95 (Wings), 0207.14.96 (Breasts), 0207.14.97(Thighs), 0207.14.98(Drumsticks) and 0207.14.99(Other) originating in or imported from United States of America.

THE ALLEGATION OF THE CONTINUATION AND/OR RECURRENCE OF DUMPING

The allegation of continuation and/or recurrence of dumping is based on the comparison between the normal values and the export prices.

The applicant stated that it is of the view that sales in the USA with regard to bone-in portions are not in the ordinary course of trade as bone-in portions are sold below cost. The applicant stated that the existence of the particular market situation in the USA, the sales of frozen dark meat bone-in portions do not permit a proper comparison with the product exported to SACU, namely dark meat frozen bone-in portions.

The applicant constructed the normal values using the broiler price as the basis for the construction.

Export prices were determined based on the official imports statistics from the South African Revenue Services (SARS).

On this basis the Commission found that there is *prima facie* proof of the likelihood of continuation and/ or recurrence of dumping if the anti-dumping duties are removed.

THE ALLEGATION OF CONTINUATION AND/OR RECURRENCE OF MATERIAL INJURY

The applicant alleged and submitted *prima facie* evidence to indicate that should the anti-dumping duties be removed, alleged dumped import volumes would increase as a result there is a likelihood that the applicant will experience price undercutting, depression and price suppression.

The applicant's information indicated that there is a likelihood that it would also experience a decline in sales volume and value, output, market share, return on assets, gross and net profit, employment, productivity, utilisation of capacity, growth, increase in inventory volumes, reduction in the ability to raise capital and negative cashflow should the anti-dumping duties be removed.

On this basis the Commission found that there is *prima facie* proof indicating a likelihood of recurrence or continuation of material injury if the anti-dumping duties are removed.

PERIOD OF INVESTIGATION

The investigation period for dumping is from 01 July 2015 to 30 June 2016, and the injury investigation involves evaluation of data for the period of 01 July 2013 to 30 June 2016 and estimates should anti-dumping duties be removed.

PROCEDURAL FRAMEWORK

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of a sunset review 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) giving due regard to the World Trade Organisation Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement).

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 and the resulting 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

PROCEDURES AND TIME LIMITS

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-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 the 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 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 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 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 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, Ms Thuli Nkomo at telephone number +27 12 394 1190 or Ms Boniswa Mehlomakulu at telephone number +27 12 394 3636 or at fax number +27 12 394 0518.

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