

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 54 OF 2021

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES *GALLUS DOMESTICUS* ORIGINATING IN OR IMPORTED FROM BRAZIL, DENMARK, IRELAND, POLAND AND SPAIN

The South African Poultry Association (SAPA) submitted an application to the International Trade Administration Commission of South Africa (the Commission) alleging that frozen bone-in portions of the species *Gallus Domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain are being dumped on the Southern African Customs Union (SACU) market, causing material injury and a threat of material injury to the SACU industry concerned.

THE APPLICANT

The application was lodged by SAPA. The Applicant alleges that the dumped products are causing material injury and that a threat of material injury exists. 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 a threat of material injury and causality.

THE PRODUCT

The product allegedly being dumped is frozen bone-in portions of the species *Gallus domesticus*, classifiable with 7 separate tariff subheadings under 0207.14.9 each providing for a different cut of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain.

The tariff subheadings applicable is as follows:

Country	Tariff heading	Description
Brazil	0207.14.93	Frozen Leg Quarters
	0207.14.95	Frozen Wings
	0207.14.96	Frozen Breasts (with Bone-In)
	0207.14.99	Other Frozen Bone-In
Denmark	0207.14.93	Frozen Leg Quarters
	0207.14.95	Frozen Wings
	0207.14.97	Frozen Thighs
	0207.14.98	Frozen Drumsticks
	0207.14.99	Other Frozen Bone-In
Ireland	0207.14.93	Frozen Leg Quarters
	0207.14.95	Frozen Wings
	0207.14.97	Frozen Thighs
	0207.14.98	Frozen Drumsticks
Poland	0207.14.93	Frozen Leg Quarters
	0207.14.95	Frozen Wings
	0207.14.98	Frozen Drumsticks
Spain	0207.14.95	Frozen Wings
	0207.14.97	Frozen Thighs
	0207.14.98	Frozen Drumsticks

THE ALLEGATION OF DUMPING

The allegation of dumping is based on the comparison between the normal values in Brazil, Denmark, Ireland, Poland and Spain and the export prices from Brazil, Denmark, Ireland, Poland and Spain respectively.

The normal values for Brazil for tariff subheadings 0207.14.93, 0207.14.95 and 0207.14.96 were determined based on a monthly average retail price for the months of September 2019 to December 2019 and March 2020. The normal value for Brazil for tariff subheading 0207.14.99 was constructed using average live chicken prices for Brazil and costs of production in Brazil.

The normal values for tariff subheadings 0207.14.93, 0207.14.95, 0207.14.97, 0207.14.98 and 0207.14.99 were constructed for Denmark based on the production costs of a broiler carcass and adjustments for selling, general and administrative costs and a reasonable allowance for profit.

The normal values for tariff subheadings 0207.14.93, 0207.14.95, 0207.14.97 and 0207.14.98 were constructed for Ireland based on the production costs of a broiler carcass and adjustments for selling, general and administrative costs and a reasonable allowance for profit.

The normal values for tariff subheadings 0207.14.93, 0207.14.95 and 0207.14.98 were constructed for Poland based on the production costs of a broiler carcass and adjustments for selling, general and administrative costs and a reasonable allowance for profit.

The normal values for tariff subheadings 0207.14.95, 0207.14.97 and 0207.14.98 were constructed for Spain based on the production costs of a broiler carcass and adjustments for selling, general and administrative costs and a reasonable allowance for profit.

The export prices were determined based on import statistics from the South African Revenue Services (SARS) and are converted into local currencies using exchange rates obtained from the Oanda Corporation.

On this basis, the Commission found that there was *prima facie* proof of dumping of the subject product from Brazil, Denmark, Ireland, Poland and Spain on the tariff subheadings mentioned above.

Dumping margins for Brazil, Denmark, Ireland, Poland and Spain were calculated as follows:

Brazil

The dumping margins for Brazil were calculated to be as follows:

Tariff heading	Description	Margin of dumping as a % of FOB export price
0207.14.93	Frozen Leg Quarters	80.90%
0207.14.95	Frozen Wings	124.35%
0207.14.96	Frozen Breasts (with Bone-In)	9.02%
0207.14.99	Other Frozen Bone-In	133.16%

Denmark

The dumping margins for Denmark were calculated to be as follows:

Tariff heading	Description	Margin of dumping as a % of FOB export price
0207.14.93	Frozen Leg Quarters	172.38%
0207.14.95	Frozen Wings	194.85%
0207.14.97	Frozen Thighs	201.05%
0207.14.98	Frozen Drumsticks	172.38%
0207.14.99	Other Frozen Bone-In	160.00%

Ireland

The dumping margins for Ireland were calculated to be as follows:

Tariff heading	Description	Margin of dumping as a % of FOB export price
0207.14.93	Frozen Leg Quarters	161.00%
0207.14.95	Frozen Wings	148.57%
0207.14.97	Frozen Thighs	177.66%
0207.14.98	Frozen Drumsticks	153.40%

Poland

The dumping margins for Poland were calculated to be as follows:

Tariff heading	Description	Margin of dumping as a % of FOB export price
0207.14.93	Frozen Leg Quarters	39.18%
0207.14.95	Frozen Wings	27.36%
0207.14.98	Frozen Drumsticks	29.81%

Spain

The dumping margins for Spain were calculated to be as follows:

Tariff heading	Description	Margin of dumping as a % of FOB export price
0207.14.95	Frozen Wings	102.22%
0207.14.97	Frozen Thighs	114.12%
0207.14.98	Frozen Drumsticks	82.00%

PERIOD OF INVESTIGATION

The period of investigation for purposes of determining the dumping margins in the exporting countries of origin will be from 1 July 2019 to 30 June 2020. The period of investigation for purposes of determining material injury and a threat of material injury will be from 1 July 2017 – 30 June 2020.

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). 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 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, a sworn affidavit setting out the reasons why it is impossible to comply should be provided.

A sworn affidavit is defined as a written sworn statement of fact voluntarily made by an affiant or deponent under an oath or affirmation administered by a person authorized to do so by law. Such statement is witnessed as to the authenticity of the affiant's signature by a taker of oaths, such as a notary public or commissioner of oaths. An affidavit is a type of verified statement or showing, or in other words, it contains verification, meaning it is under oath or penalty of perjury and this serves as evidence to its veracity and is required for court proceedings.

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 and threat

of material injury must be submitted in writing to the following address:

Physical address

Senior Manager: Trade Remedies I
International Trade Administration Commission
Block E – The DTI Campus
77 Meintjies Street
SUNNYSIDE
PRETORIA, SOUTH AFRICA

Postal address

Senior Manager: Trade Remedies I
Private Bag X753
PRETORIA
0001
SOUTH AFRICA

PROCEDURES AND TIME LIMITS

Due to Covid-19 pandemic, these responses can be e-mailed to the following addresses: STakacs@itac.org.za and Msebe@itac.org.za and TTshikomba@itac.org.za.

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 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.

Should you have any queries, please do not hesitate to contact Ms Selma Takacs at STakacs@itac.org.za or Ms Mosa Sebe at Msebe@itac.org.za or Mr Thabelo Tshikomba at TTshikomba@itac.org.za.