

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 3706

26 July 2023

REQUEST FOR COMMENTS FROM INTERESTED PARTIES ON THE PROPOSAL TO FURTHER RESTRICT THE EXPORT OF COPPER SEMI-FINISHED PRODUCTS, TEMPORARILY PROHIBIT THE EXPORT OF USED OR SECOND-HAND RAILS, AND SUBJECT RAILS TO EXPORT CONTROL

Copper Semi-Finished Products

1. In Government Notice No R 2801 published in *Government Gazette* No 47627, dated 30 November 2022, after taking into account research from independent experts, including Trade and Industrial Policy Strategies, Genesis Analytics, comments from State Owned Enterprises and public comments, the Policy Implementation Actions on Measures to Restrict and Regulate Trade in Ferrous and Non-Ferrous Metals Waste, Scrap and Semi-Finished Ferrous and Non-Ferrous Metal Products to Limit Damage to Infrastructure and the Economy (the "Policy"), was published.
2. Genesis Analytics has estimated that the cost to the economy of copper theft in South Africa exceeded R46 billion in 2020/2021. This does not take into account, *inter alia*:
 - 2.1. the additional long-term costs associated with decreased business and general confidence (from repeated, rail and electricity interruptions)
 - 2.2. the long-term costs associated with the loss of South Africa's low-cost rail advantage, and
 - 2.3. loss of life including from: a) disrupted essential services (e.g. hospital power supply); b) attacks on security guards; c) explosions; d) transport-related accidents; and e) the death of the thieves themselves as they attempt to dismantle high-powered electrical infrastructure.
3. The export of copper semi-finished products was identified in the Policy as a major avenue for the export of copper waste and scrap and therefore a major avenue open for the monetisation of stolen copper.
4. Genesis Analytics has recommended the prohibition of the export of copper semi-finished products to partly address the problem of copper theft. However, a less restrictive approach was taken:
 - 4.1. In Government Notice No. R. 2802 of 2022 published in *Government Gazette* No. 47627 dated 30 November 2022, the Minister published a

trade policy directive and notice in terms of sections 5 and 6 respectively, of the International Trade Administration Act, 71 of 2002 (the "Act"), that:

- 4.1.1. ferrous and non-ferrous waste and scrap metal of a kind listed in the schedule to Government Notice No. R. 2802 of 2022, which appears below, ("Scrap Metal") may not be exported from the Republic of South Africa for a temporary period of six months (from 30 November 2022 to 30 May 2023), subject to certain provisos; and
- 4.1.2. the International Trade Administration Commission of South Africa ("ITAC") shall suspend the operation of the Price Preference System for the exportation of ferrous and non-ferrous waste and scrap metal (the "PPS") insofar as it relates to Scrap Metal for a period of six months (from 30 November 2022 to 30 May 2023), subject to a certain proviso.

The schedule referred to in 4.1 is as follows:

SCHEDULE TO GOVERNMENT NOTICE NO. R. 2802 OF 2022

Description of goods	Tariff heading
Ferrous waste and scrap, remelting scrap ingots of iron or steel except for (i) waste and scrap of stainless steel, and (ii) ferrous waste and scrap generated in the ordinary course of business as a by-product of a manufacturing process	72.04 (excluding 7204.21)
Copper waste and scrap	7404.00

- 4.2. In Government Notice No. R. 2803 of 2022 published in *Government Gazette* No. 47627 dated 30 November 2022, the Minister of Trade, Industry and Competition (the "Minister") published a Notice in terms of section 6, of the Act amending Government Notice No. R. 92 published in *Government Gazette* No. 35007, dated 10 February 2012, in order to, *inter alia*, provide that the following semi-finished copper products could not be exported from the Republic of South Africa except under the authority of and in accordance with the conditions stated in a permit issued by ITAC:

Description of goods	Tariff heading
Unrefined copper; copper anodes for electrolytic refining	74.02
Refined copper and copper alloys, unwrought	74.03
Master alloys of copper	74.05
Copper powders and flakes	74.06

- 4.3. In order to give effect to the above, ITAC published the Export Control Guidelines on the Exportation of Semi-Finished Metal Products in Government Notice No. R. 2805 of 2022 published in *Government Gazette* No. 47627 dated 1 December 2022.
- 4.4. In Government Notice No. R. 3552 of 2023 published in *Government Gazette* No. 48791 dated 15 June 2023, the Minister published a trade policy directive and notice in terms of sections 5 and 6 of the Act that:
 - 4.4.1. Scrap Metal may not be exported from the Republic of South Africa for a further temporary period of six months from the date of publication of that trade policy directive and notice; and
 - 4.4.2. ITAC shall suspend the operation of the PPS insofar as it relates to Scrap Metal for a further temporary period of six months from the date of publication of that trade policy directive and notice or until the date on which the PPS terminates, whichever is the earlier.
5. The measures referred to in paragraph 4 are interim measures which form part of Phase 1 of the Policy.
6. Phase 2 of the Policy includes the enhancement of the regulation of scrap metal trade through amendments to the Regulations published under the Second-Hand Goods Act, 6 of 2009, to bolster the applicable metal trading registration regime, as well as further interventions such as the limitation of ports and land borders for export of waste, scrap and semi-finished metal products.
7. From 30 November 2022, the theft of copper and ferrous metal has reduced but remains at very high levels and continues to cause considerable damage to the infrastructure and to the economy. In the same period, the export of semi-finished copper products remained high.
8. The application of export controls by ITAC on copper semi-finished products referred to in 4.2 and 4.3 above has not sufficiently curtailed the theft of copper, as ITAC has, in many cases, not been able to verify the source of copper used in the production of semi-finished copper products and, if the source is copper waste and scrap, whether it is stolen or not. This is because the supply chain of the semi-finished copper products comprises, in many cases, hundreds or possibly thousands of individuals and small informal traders who sell copper to aggregators and recyclers, who in turn supply it to mills to produce semi-finished copper products. The export of semi-finished copper products remains a major avenue open for the export of stolen copper.
9. In order to address these problems, the Minister proposes to limit the sources of copper which can be used to produce copper semi-finished products for export and to issue a trade policy directive in terms of section 5 of the Act that from the date of publication of that trade policy directive until 15 December 2023, ITAC shall only issue export permits for the export of semi-

finished copper products of a kind listed in the table under 4.2 above after ITAC has determined that the products are manufactured from:

- 9.1. raw copper ore;
- 9.2. copper waste and scrap generated in the ordinary course of business as a by-product of a manufacturing process; or
- 9.3. used infrastructure disposed of by state-owned enterprises.

This limitation will enable ITAC to more easily verify the source of the copper used to produce copper semi- finished products.

10. Export permits issued prior to the date of publication of the trade policy directive will continue to be valid.
11. A copy of the draft trade policy directive is attached.

Rails

12. It has come to the attention of ITAC that exporters are exporting ferrous scrap rails (that may consist of stolen infrastructure) under tariff sub-heading 7302.10, which provides for rails. The exportation of rails under tariff sub-heading 7302.10 ("Rails") is not presently subject to ITAC export control measures, which creates a loophole for the exportation of ferrous rail scrap without any control or regulation.

13. The Minister proposes to:

- 13.1. prohibit the export of used or second-hand Rails until 15 December 2023;
- 13.2. bring Rails under export permit control of ITAC. This will necessitate an amendment of the export control regulations.
- 13.3. direct ITAC not to issue export permits for used and second-hand Rails until 15 December 2023. ITAC may issue export permits for new Rails. After 15 December 2023, ITAC may issue export permits for new, used, and second-hand Rails.

A copy of the draft trade policy directive and notice is attached.

14. The Minister requests interested parties to make submissions and/or comments on the proposals.

PROCEDURES AND TIME LIMITS

All comments and submissions must be submitted to the Director-General of Trade, Industry and Competition, marked for the attention of Mr. Mahendra Shunmoogam, either by e-mail on scrapmetalspolicy2023@thedtic.gov.za or hand delivered at 77 Meintjies Street, Block A, 1st floor, Sunnyside, Pretoria, 0002, by no later than 21 calendar days from the date of publication hereof.



MR EBRAHIM PATEL
MINISTER OF TRADE, INDUSTRY AND COMPETITION

**DRAFT TRADE POLICY DIRECTIVES ISSUED IN TERMS OF SECTION 5 AND
NOTICES IN TERMS OF SECTION 6 OF THE INTERNATIONAL TRADE
ADMINISTRATION ACT, 71 OF 2002, ON THE EXPORTATION OF SEMI-
FINISHED COPPER PRODUCTS AND RAILS**

**INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA
EXPORT CONTROL**

I, Ebrahim Patel, in my capacity as Minister of Trade, Industry and Competition, (the "Minister") acting under the powers vested in me by section 5 and section 6 of the International Trade Administration Act, 71 of 2002 (the "Act"), hereby:

1. issue a trade policy directive in terms of section 5 of the Act that the International Trade Administration Commission of South Africa ("ITAC") shall, from the date of publication of this trade policy directive until 15 December 2023, only issue export permits for the export of semi-finished copper products of a kind listed in the schedule hereto after ITAC has determined that the products are manufactured from:

- 1.1. raw copper ore;
- 1.2. copper waste and scrap generated in the ordinary course of business as a by-product of a manufacturing process; or
- 1.3. used infrastructure disposed of by state-owned enterprises,

provided that semi-finished copper products of a kind listed in the schedule hereto for which export permits were issued by ITAC prior to the publication of this trade policy directive may be exported.

2. prescribe, in terms of section 6(1)(c) of the Act, that used or second-hand rails classified under tariff heading 7302.10 may not be exported from the Republic of South Africa from the date of publication of this notice until 15 December 2023.
3. amend Government Notice No. R. 92 published in *Government Gazette* No. 35007, dated 10 February 2012, in terms of section 6(1)(d) of the Act, by the inclusion under Schedule 1 of the following description in Column (1), Code letter in Column (2) and tariff subheading in Column (3):

Description of goods	Code letter	Tariff heading
Rails	T	7302.10

4. issue a trade policy directive in terms of section 5 of the Act that ITAC shall not accept or process any applications for export permits for the exportation of used or second-hand rails classified under tariff heading 7302.10 whilst the prohibition referred to in 2 is in force.

SCHEDULE

Description of goods	Tariff heading
Unrefined copper; copper anodes for electrolytic refining	74.02
Refined copper and copper alloys, unwrought	74.03
Master alloys of copper	74.05
Copper powders and flakes	74.06