
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 2199 OF 2023

REQUEST FOR COMMENTS FROM INTERESTED PARTIES ON THE PROPOSALS TO EXTEND THE TEMPORARY PROHIBITION OF THE EXPORT OF CERTAIN FERROUS AND NON-FERROUS WASTE AND SCRAP METAL, EXTEND THE TEMPORARY SUSPENSION OF THE PRICE PREFERENCE SYSTEM INsofar AS IT RELATES TO CERTAIN FERROUS AND NON-FERROUS WASTE AND SCRAP METAL, 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

CERTAIN FERROUS AND NON-FERROUS WASTE AND SCRAP METAL

1. In General Notice No. R. 3552 published in Government Gazette No. 48791 dated 15 June 2023, the Minister of Trade, Industry and Competition (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 ITA Act) (the "Trade Directive and Notice"), that:
 - 1.1. ferrous and non-ferrous waste and scrap metal of a kind listed in the schedule to the Trade Directive and Notice ("Scrap Metal") may not be exported from the Republic of South Africa for a temporary period of six months (from 15 June 2023 to 15 December 2023); and
 - 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 15 June 2023 to 15 December 2023), and
 - 1.3. ITAC shall not accept or process any applications for export permits for Scrap Metal for a period of six months (from 15 June 2023 to 15 December 2023).
2. The Trade Directive and Notice forms part of Phase 1 of 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 published in Government Gazette No. 47627 (the "Policy"). The Policy has been approved by Cabinet.
3. 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.

4. The Policy provides that if sufficient progress has not been made in the implementation of the Phase 2 interventions and/or the extent of copper and ferrous metal theft has not been sufficiently reduced, the temporary export prohibition may be extended.
5. Feedback received from December 2022 indicates that while incidents of the theft of copper and ferrous metal have reduced, they remain at very high levels and continue to cause considerable damage to infrastructure and to the economy. Based on the feedback, and representations, including from those made by State Owned Enterprises, consideration is being given to extending the temporary export prohibition and such temporary suspension of the operation of the PPS for a further period of six months.
6. Although progress has been made in the implementation of Phase 2, it is estimated that Phase 2 will take approximately a further six months to implement. In this regard, draft regulations amending the Regulations for Dealers and Recyclers, 2012, in terms of section 41(1) of the Second-Hand Goods Act, 2009 (Act No. 6 of 2009) have recently been published for public comment in Government Notice 4068 in Government Gazette 49720, on 17 November 2023.
7. Recognising the complexity of the matter, and the diversity of interests and economic considerations related to this issue, the Minister is considering issuing a trade policy directive and notice in terms of sections 5 and 6 of the ITA Act that:
 - 7.1. 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 the trade policy directive and notice (the "Temporary Export Prohibition");
 - 7.2. 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 the trade policy directive and notice, (the "Temporary PPS Suspension"); and
 - 7.3. ITAC shall not accept or process any applications for export permits for Scrap Metal for a further temporary period of six months from the date of publication of the trade policy directive and notice(collectively, the Extension Trade Policy Directive and Notice).
8. A copy of the draft Extension Trade Policy Directive and Notice is attached.
9. If sufficient progress has not been made in the implementation of the Phase 2 interventions and/or the extent of copper and ferrous metal theft has not been sufficiently reduced, the Temporary Export Prohibition and the Temporary PPS Suspension may be extended further.

COPPER SEMI-FINISHED PRODUCTS

10. In Government Notice No 3706 published in Government Gazette No 49027 dated 26 July 2023, the Minister requested comments on the proposal to further temporarily restrict the export of copper semi-finished products until 15 December 2023 (the "Semi-Finished Products Restriction").
11. The Semi-Finished Products Restriction sought to address circumvention of the original measures and the associated massive theft and damage to public and other infrastructure, by limiting the sources of copper which can be used to produce copper semi-finished products for export. The Semi-Finished Products Restriction was proposed to be implemented through the publication of a trade policy directive in terms of section 5 of the Act which provides 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 below, after ITAC has determined that the products are manufactured from:
- 11.1. raw copper ore;
- 11.2. copper waste and scrap generated in the ordinary course of business as a by-product of a manufacturing process; or
- 11.3. used infrastructure disposed of by state-owned enterprises.

This limitation was considered to enable ITAC to verify the source of the copper used to produce semi-finished products.

| 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 |

12. The purpose of the proposed Semi-Finished Products Restriction is to remove a major avenue for the export of stolen copper waste and scrap which was not sufficiently curtailed by the export controls on copper semi-finished products. ITAC has, in many instances, not been able to verify the sources of copper used in the production of semi-finished copper products and, whether the copper feedstock material has been legitimately obtained or was stolen. The date on which the proposed semi-finished products restriction was proposed to expire (15 December 2023), was intended to coincide with the date on which the current prohibition of the export of certain ferrous and non-ferrous waste and scrap metal is due to expire.
13. Based on the comments and representations received and the advice from experts, the Minister is still giving due regard and careful consideration to the proposed Semi-Finished Products Restriction.

14. In the event that the Minister decides to extend the expiry date of the Trade Directive and Notice published in Government Gazette No. 48791, the Minister, taking into account all comments received, is considering the following:
 - 14.1. extending the expiry date of the Semi-Finished Products Restriction to the same date, proposed to be six months from the date of publication of the Extension Trade Policy Directive and Notice,
 - 14.2. excluding infrastructure material disposed of by state-owned enterprises in the list of sources of copper which can be used to produce copper semi-finished products for export; and
 - 14.3. including imported copper waste and scrap to the list of sources of copper which can be used to produce copper semi-finished products for export.
15. The reasons for the proposed amendment in 14.2 above include the difficulties in verifying whether the semi-finished copper products are manufactured from infrastructure disposed of by state-owned enterprises.
16. The reasons for the proposed amendment in 14.3 above include (i) imported copper waste and scrap does not have an impact on theft of local infrastructure; and (ii) allowing imports from the global market may help sustain the viability of semi-finished producers.
17. A copy of the draft trade policy directive to further temporarily restrict the export of copper semi-finished products for a period of six months from the date of publication of the Extension Trade Policy Directive and Notice is attached.

RAILS

18. In Government Notice No. 3706 published in Government Gazette No. 49027 dated 26 July 2023 the Minister requested comments from interested stakeholders on the proposal to temporarily prohibit the export of used or second-hand rails until 15 December 2023 and subject rails to export control (the "Rail Proposals").
19. In the Rail Proposals, the following is proposed:
 - 19.1. the prohibition of the export of used or second-hand Rails until 15 December 2023;
 - 19.2. that rails be brought under export permit control of ITAC through an amendment of the export control regulations.
 - 19.3. that ITAC be directed not to issue export permits for used and second-hand rails until 15 December 2023.
20. The purpose of the Second Hand Rail Proposals is to prevent exporters from exporting ferrous scrap rails (that may consist of stolen infrastructure) under tariff sub-heading 7302.10.

21. The original date on which the proposed used and second hand rail prohibition, set out in paragraphs 18 and 19, was proposed to expire (15 December 2023), was intended to coincide with the expiry date of the current prohibition of the export of certain ferrous and non-ferrous waste and scrap metal.
22. Based on comments and representations received and the advice from experts, the Minister is still giving due regard and careful consideration to the Rail Proposals.
23. In the event that the Minister decides to extend the expiry date of the Trade Directive and Notice, the Minister, taking into account all comments received, is considering extending the expiry date of the proposed used and second hand rail prohibition to the same date, proposed to be six months from the date of publication of the Extension Trade Policy Directive and Notice.
24. A copy of the draft trade policy directive and notice to temporarily prohibit the export of used or second-hand rails for a period of six months from the date of publication of the Extension Trade Policy Directive and Notice and subject rails to export control is attached.

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 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 07 December 2023.



MR EBRAHIM PATEL
MINISTER OF TRADE, INDUSTRY AND COMPETITION

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE OF 2023

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

EXPORT CONTROL

**DRAFT NOTICE FOR PUBLIC COMMENT: TRADE POLICY DIRECTIVE ISSUED
IN TERMS OF SECTION 5 AND NOTICE IN TERMS OF SECTION 6 OF THE
INTERNATIONAL TRADE ADMINISTRATION ACT, 71 OF 2002, ON THE
EXPORTATION OF FERROUS AND NON-FERROUS WASTE AND SCRAP
METAL, RAILS, AND COPPER SEMI-FINISHED PRODUCTS**

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. prescribe, in terms of section 6(1)(c) of the Act, that notwithstanding Government Notice No. R.92 published in *Government Gazette* No. 35007, as amended from time to time, ferrous and non-ferrous waste and scrap metal of a kind listed in Schedule A hereto may not be exported from the Republic of South Africa for a period of six months from the date of publication of this Trade Policy Directive and Notice.
2. issue a trade policy directive in terms of section 5 of the Act that the International Trade Administration Commission of South Africa ("ITAC") shall:
 - 2.1. suspend the operation of the Price Preference System for the exportation of ferrous and non-ferrous waste and scrap metal (the "PPS") which is set out in the Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Waste and Scrap as published in General Notice No. 532, *Government Gazette* No. 43765 of 2 October 2020 as amended from time to time (the "PPS Guidelines") insofar as it relates to ferrous and non-ferrous waste and scrap metal of a kind listed in Schedule A hereto for a period of six months from the date of publication of this Trade Policy Directive and Notice,
 - 2.2. not accept or process any applications for export permits for the exportation of ferrous and non-ferrous waste and scrap metal of a kind listed in Schedule A hereto for a period of six months from the date of publication of this Trade Policy Directive and Notice.
3. issue a trade policy directive in terms of section 5 of the Act that the ITAC shall, for a period of six months from the date of publication of this Trade Policy Directive and Notice, only issue export permits for the export of semi-finished copper products of a kind listed in Schedule B hereto after ITAC has determined that the products are manufactured from:

- 3.1. raw copper ore;
- 3.2. copper waste and scrap generated in the ordinary course of business as a by-product of a manufacturing process; or
- 3.3. imported copper waste and scrap,

provided that semi-finished copper products of a kind listed in Schedule B hereto for which export permits were issued by ITAC prior to the publication of this Trade Policy Directive and Notice may be exported.

4. 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 for a period of six months from the date of publication of this Trade Policy Directive and Notice.
5. 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 |

6. 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 4 is in force.

SCHEDULE A

| 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 |

SCHEDULE B

| 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 |