

INVESTIGATION INTO SAFEGUARD MEASURES IN TERMS OF ARTICLE 34(2) OF THE EPA ON FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES GALLUS DOMESTICUS ORIGINATING IN OR IMPORTED FROM THE EUROPEAN UNION: ESSENTIAL FACTS LETTER

As you are aware, the International Trade Administration Commission of South Africa (the Commission) initiated an investigation for safeguard measures on the increased imports of frozen bone-in portions of fowls of the species gallus domesticus in terms of Article 16 of the TDCA in February 2016.

On 6 December 2016 a letter was received from the Minister of Trade and Industry (the Minister) informing the Commission that Article 16 of the TDCA has been repealed by the provisional entry into force of the Economic Partnership Agreement between the European Union and its member states, of the one part, and the SADC EPA states, of the other part (The EPA). Because Article 34(2) of the EPA makes provision for a bilateral safeguard which is similar to the agricultural safeguards provided for in Article 16 of the TDCA, the Minister referred the matter back to the Commission to continue the investigation in terms of Article 34(2) of the EPA and approved the imposition of a provisional safeguard measure in terms of Article 34(8) of the EPA.

On 15 December 2016, SARS published a notice in the Government Gazette, imposing a provisional measure of 13.9 per cent ad valorem on imports of frozen bone-in portions of fowls of the species gallus domesticus originating in the E.U.

The Commission, in February 2017, decided after a request by the Applicant to grant the Applicant the opportunity to update its injury information to the end of December 2016. The Commission received updated information from the Applicant and thereafter the information submitted was verified by the Commission. Interested parties were given an opportunity to comment on the updated information. The provisional safeguard duty expired on 3 July 2017.

This letter therefore serves to inform you that the following "essential facts" following on information in the 2nd essential facts letter dated 15 September 2016 and the latest updated information submitted by the Applicant, are being considered by the

Commission for purposes of its recommendation to the Minister:

General

- 1 . The Commission considered all the comments submitted by all the interested parties. Non-confidential versions of all comments submitted are available on the public file.

Increase in the volume of imports from the EU

2. There was a further increase in imports from the EU of 25.8 per cent from 2015 to 2016. Imports from the EU continuously increased over the last couple of years even after the implementation of anti-dumping duties against Germany, the Netherlands and the UK and at lower prices in 2016 as compared to 2015.

Threat of serious disturbance/injury in the SACU market

3. The SACU industry continued to experience a price disadvantage, price undercutting, price suppression and a loss in market share. The information further shows a decrease in gross profit as well as net profit. The following table shows all the serious disturbance/injury indicators:

Disturbance and/or serious injury indicators experienced by the Participating Producers in 2016

Disturbance/ serious injury indicator	2011	2015	2016	Change from Base Year (2011 - 2016)	Change from Previous Year (2015 - 2016)	Disturbance/ Serious Injury Experienced in 2016
Import Volumes from the EU	62.534.479 kg	154.301.728 kg	194.084.535 kg	Increase	Increase	Yes.
FOB Import Price from the EU	R 10.37/ kg	R15.10/kg	R14.91/kg	Increase	Decrease	Yes.
Price Undercutting (indexed)	100	59	84	Decrease	Increase	Yes.
Price Suppression (indexed)	100	103	121	Increase	Increase	Yes.
Price Depression (indexed)	100	133	137	Increase	Increase	No.

Price Disadvantage (indexed)	100	140	291	Increase	Increase	Yes.
Participating Producers' SACU Market Share (indexed)	100	96	94	Decrease	Decrease	Yes.
SACU Sales by Participating Producers (indexed)	100	98	100	Increase	Increase	(Experienced by some Participating Producers)
Production Volumes (indexed)	100	100	99	Decrease	Decrease	Yes.
Capacity Utilisation (indexed)	100	89	89	Decrease	Increase	Yes.
Inventory (indexed)	100	163	125	Increase	Decrease	Yes.
Disturbance I serious injury indicator	2011	2015	2016	Change from Base Year (2011 - 2016)	Change from Previous Year (2015 - 2016)	Disturbance I Serious Injury Experienced in 2016
Gross Profit per unit (indexed)	100	117	-6	Decrease	Decrease	Yes.
Net Profit per Unit (indexed)	100	87	-158	Decrease	Decrease	Yes.

4. In calculating a price disadvantage, the same method was used as for the calculation of the provisional safeguard measure. The Applicant's unsuppressed selling price was compared to the landed cost of the imported product. The landed cost will include all costs incurred from the ex-factory export price to where the goods are cleared in SACU including import duties payable. The Commission in particular considered comments by interested parties indicating that the current anti-dumping duties on Germany, Netherlands and the UK should also be taken into account. Taking information obtained from SARS on actual anti-dumping duties paid as a percentage of all imports from the EU, it was calculated that an average of 3.3% should be added to the FOB price to account for anti-dumping duties payable. The price disadvantage is then expressed as a percentage of the fob export price in order to calculate the price disadvantage percentage. A price disadvantage of 35.3 per cent was calculated.

Causal link

5. The Commission noted comments by interested parties with regard to factors other than the increased imports, such as the drought and the increase in costs, are causing a disturbance in the SACU market. The Commission is of the view that although increasing costs played a role in the domestic industry's ability to compete with imports, it should also be considered that imports increased continuously notwithstanding the anti-dumping duties that were implemented against three EU countries. Although there are factors other than the increase in the volume of imports from the EU that are causing a threat of serious injury / disturbance in the SACU market, these factors do not sufficiently detract from the causal link between the increased imports and the threat of serious injury / disturbance in the SACU market.

Substitution of TDCA by the SADC EPA

6. The TDCA was substituted by a renegotiated free trade agreement between the SADC EPA states and the SACU, on the one hand, and the members of the European Union on the other hand, styled the 'Economic Partnership Agreement between the European Union and its member states, of the one part, and the SADC EPA states, of the other part' (EPA).

7. Article 34 of the EPA makes provision for a bilateral safeguard which is similar to the agricultural safeguard provided for in article 16 of the TDCA and the jurisdictional requirements for these measures are overlapping. The Commission is therefore of the view that the substitution of article 16 of the TDCA with article 34 of the EPA did not affect the validity of the Commission's present investigation.

Recommendation

8. On the basis of the information available, the Commission is considering making a recommendation to the Minister of Trade and Industry that:

- (a) There is sufficient information to indicate that there was an increase in the volume of imports from the EU in both absolute and relative terms;
- (b) There is sufficient information to indicate that the SACU industry is experiencing a threat of serious injury / disturbance in the SACU market;
- (c) Although there are factors other than the increase in the volume of imports from the EU that are causing a threat of serious injury / disturbance in the SACU market, these factors do not sufficiently detract from the causal link between the

increased imports and the threat of serious injury / disturbance in the SACU market.

The Commission is therefore considering informing the Minister that there is sufficient information available for the matter to be raised in the Trade and Development Committee.

It should be emphasized that the Commission has not yet made its recommendation to the Minister and nothing in this letter should be construed as such. The recommendation will only be made once the Commission has considered all the parties' comments on this essential facts letter.

Any comments on the above "essential facts" should be submitted within 7 days from the date of this letter to the Senior Manager, Trade Remedies I, in order for the Commission to be in a position to take such comments into consideration before making its recommendation to the Minister of Trade and Industry. No extension on the comment period and no further oral hearings will be granted.

Should you have any queries, please do not hesitate to contact Ms. Carina Van Vuuren at +27 12 394 3594.

Yours sincerely



Siyabulela Tsengiwe
CHIEF COMMISSIONER
Date: 14/08/2017