REPORT NO. 723

CREATION OF A TEMPORARY REBATE PROVISION FOR THE IMPORTATION OF PHOTOVOLTAIC CELLS, ASSEMBLED IN MODULES OR MADE UP INTO PANELS, CLASSIFIABLE UNDER TARIFF SUBHEADING 8541.43

The International Trade Administration Commission of South Africa herewith presents its **Report No. 723: Creation of a temporary rebate provision for the importation of photovoltaic cells, assembled in modules or made up into panels, classifiable under tariff subheading 8541.43,** with recommendations.

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AYABONGA CAWE
CHIEF COMMISSIONER

PRETORIA
04/12/**2023**

REPUBLIC OF SOUTH AFRICA

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 723

CREATION OF A TEMPORARY REBATE PROVISION FOR THE IMPORTATION OF PHOTOVOLTAIC CELLS, ASSEMBLED IN MODULES OR MADE UP INTO PANELS, CLASSIFIABLE UNDER TARIFF SUBHEADING 8541.43

Synopsis

The Minister of Trade, Industry and Competition ("Minister") requested the International Trade Administration Commission of South Africa ("ITAC" or the "Commission") to consider the possibility of creating a rebate provision for the importation of solar panels in light of the current electricity crisis in South Africa.

The Commission considered the application in light of all information at its disposal. In particular, the Commission considered the following factors:

- The subject product is a crystalline silicon photovoltaic (PV) module or panel. A number of solar cells form a solar module or panel, which can then be combined to form solar power systems, ranging from a few watts of electricity output to multi-megawatt power stations;

- The subject product is used to convert energy from the sun directly into electricity by photovoltaic effect. Photovoltaic is a solar-power technology for generating electricity using semiconductor devices known as solar cells. The subject product is used for industrial, commercial and domestic use.

- The need to provide protection to the domestic industry which has invested heavily in manufacturing capacity, while at the same time balancing that with the need to avoid shortages in the supply of components that may slow down the energy-supply rollout plan.

- The recent disinvestment by a number of domestic manufacturers in the local manufacturing of the subject product. ARTsolar and Seraphim are the only two

remaining manufacturers of the subject product in the SACU region. This is after Jinko Solar, Solaire Direct, SunPower Energy Systems Southern Africa, JApowerway and SMA Inventers Manufacturers ceased local production and resorted to importing the subject product. The major reasons for ceasing local production included, amongst others, high local manufacturing costs and high competition from low-priced imports; and

- The in-principle approval by the Minister of ITAC's Report No.613, which recommended that the rate of customs duty on crystalline silicon photovoltaic modules or panels, classifiable under tariff subheading 8541.40.10 (new 8541.43), be increased from free of duty to 10% *ad valorem*, by way of creating an 8-digit tariff subheading.

The temporary rebate provision will be made available subject to a rebate permit issued at such times, in such quantities, and subject to such conditions as ITAC may allow. As such, guidelines, rules, and conditions have been developed to ensure the effective and efficient administration of the rebate provision with measurers to mitigate the risk of abuse or misuse and to minimise the risk of unintended consequences.

The Commission concluded that in the event of shortages of solar panels in the domestic market, the temporary rebate provision may be used to mitigate risks of supply in the (ordinary course of business, especially given the current electricity crisis in South Africa.

The Commission recommended that a temporary rebate provision be created for the importation of photovoltaic cells, assembled in modules or made up into panels, classifiable under tariff subheading 8541.43.

THE APPLICATION AND TARIFF POSITION

1. The Minister of Trade, Industry and Competition ("Minister") requested ITAC to consider the possibility of creating a rebate provision for the importation of solar panels in light of the current electricity crisis in South Africa.

2. The subject product is a crystalline silicon photovoltaic (PV) module or panel. A number of solar cells form a solar module or panel, which can then be combined to form solar power systems, ranging from a few watts of electricity output to multi-megawatt power stations.

3. As a reason for the request, the Minister stated that there is a need to provide protection to the domestic industry manufacturing solar panels which has invested locally on the basis of the green value-chain while at the same time balancing that with the need to avoid shortages in the supply of components that may slow down the energy-supply rollout plan.

4. This follows the Minister's in-principle approval of ITAC's Report No.613, wherein it was recommended that the rate of customs duty on crystalline silicon photovoltaic modules or panels, classifiable under tariff subheading 8541.40.10, be increased from free of duty to 10% *ad valorem*, by way of creating an 8-digit tariff subheading.

5. The application was published in the Government Gazette No. 49106 as Notice 1995 of 2023 On 25 August 2023 for interested parties to comment, as follows:

   The creation of a temporary rebate facility on:

   "Photovoltaic cells assembled in modules or made up into panels, classifiable in tariff subheading 8541.43, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, provided the subject goods are not available in the SACU market".

6. The current tariff structure of the products subject to this application is indicated in Table 1 below:

Table 1: Tariff position for the subject products

Tariff heading	Tariff subheading	Description	Unit of measurement	Rate of duty				
				General	EU	EFTA	SADC	MERCOSUR
85.41		**Semi-conductor devices (for example, diodes, transistors, semiconductor-based transducers); photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED), whether or not assembled with other light-emitting diodes (LED); mounted piezo-electric crystals:**						
	8541.4	**Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled into modules or made up into panels; light-emitting diodes (LED):**						
	8541.43	Photovoltaic cells assembled in modules or made up into panels	u	Free	Free	Free	Free	Free

Source: SARS, (2022)

7. The South African Revenue Service ("SARS") provided the description for the temporary rebate provision of on solar panels, as follows:

   "Photovoltaic cells, assembled in modules or made up into panels, classifiable in tariff subheading 8541.43, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, provided the subject goods are not available in the SACU market"

8. The subject product is used to convert energy from the sun directly into electricity by photovoltaic effect. Photovoltaic is a solar-power technology for generating electricity using semiconductor devices known as solar cells.

9. Solar panels are made of individual solar cells consisting of various layers of material such as crystalline silicon, which are joined together to form an array. The subject product is used for industrial, commercial and domestic use.

10. Figure 1 below illustrates an image of the subject solar panel.

Figure 1: Solar Panel

INDUSTRY AND MARKET

1. ARTsolar and Seraphim Energy South Africa are the only two remaining manufacturers of the subject product in the SACU region. A number of domestic manufactures including Jinko Solar, Solaire Direct, SunPower Energy Systems Southern Africa, JApowerway and SMA Inventers Manufacturers ceased local production and resorted to importing the subject product. The major reasons for ceasing domestic production included, amongst others, high local manufacturing costs and high competition from low-priced imports.

2. High grid solar panels are used in industrial applications such as workshops, factories, plants, airports, and railway stations while small grid solar panels are widely used in power telecommunications antennas, remote lighting, highway signs, water pumping

and household applications. Over and above the mentioned applications, solar panels can also be used for various programmes and applications such as fee-for-service concessions, off-grid solar electrification, solar schools, and telecommunication.

COMMENTS RECEIVED

11. The South African Iron & Steel Institute ("SAISI") submitted comments supporting the application for the creation of a rebate provision for the importation of solar panels citing, *inter alia,* that:

- It agrees with the view that the growth of the renewable energy sector presents opportunities for industrialisation in the country. Furthermore, the rebate provision mechanism as a trade policy instrument could be an enabler for industrialisation;
- In the solar PV value chain, local steel industries have capabilities and capacity in the assembly of mounting structures and trackers. SAISI submits that the Commission to consider local content threshold as one of the requirements/criteria linked to the rebate provision;
- There is ample supply and already there are several projects that have sourced their steel requirements locally. These points towards opportunities presented by the growth in the renewable industry that can be leveraged on to stimulate demand for other local industries such as the steel sector;
- While the domestic steel industry has supplied products in large scale projects, there remains instances wherein substantial steel requirements were imported to the detriment of the local sector. It is against this background that SAISI believes that the Commission should consider imposing conditionality that encourage and drive industrialisation;
- Furthermore, according to the Draft South African Renewable Energy Master Plan (SAREM), there is a need to consider tariff protection with duties having a potential to play a role in protecting the domestic manufacturers of solar panel mounting structures made with locally sourced steel (by imposing higher tariffs on imported mounting structures). This will improve the capacity utilisation levels of the domestic steel manufacturing industry, an industry currently operating below capacity; and
- It is SAISI's view that the strategic localisation as advanced by the Masterplan will ensure that South Africa is able to harness the full potential of renewable energy,

create a sustainable and inclusive industry and ultimately contribute to a greener economic growth and job creation.

12. ARB Global (Pty) Ltd also submitted comments in support of the proposed creation of a rebate provision for the importation of solar panels citing, *inter alia,* that:

- The solar panels currently do not have any associated customs duties. However, if the situation were to change in the near future, this rebate item would become essential to offset any potential duties;
- Local manufacturers of the subject product are currently unable to meet the volume and lead time requirements, posing a significant challenge. Additionally, the quality of the panels manufactured locally differs from that of imports;
- Considering the inflationary pressures and energy crises, it is ARB's belief that if the ARTsolar application for an "Increase in duty" is approved, it will directly impact end-user costs, which is unjustified given the extended lead times, limited capacity, and the growing market size. A rebate permit could effectively regulate imports and it can be easily revoked if local circumstances change; and
- ARB is confident in the growth potential and long-term sustainability of the solar panel market, particularly in terms of energy savings. Granting a duty rebate would allow ARB to offer more flexibility in its pricing structure to accommodate market demands. The administration of the rebate provision should be designed in a way that uses a quota-based permit system to regulate imports effectively.

13. An objection to the proposed creation of a rebate provision for the importation of solar panels was received from the South African Photovoltaic Industry Association ("SAPVIA"), citing, *inter alia* that:

- It acknowledges government's desire to protect the solar PV manufacturing capability and to expand it in the medium to long term in line with the ideals of the South African Renewable Energy Masterplan;
- The Association is a proponent of localisation of the solar PV value chain. To this end, SAPVIA has commissioned a study to identify localisation potential across the entire value chain in 2022;
- The study highlights, amongst other key findings, that the rapid growth in solar PV

installations expected in South Africa creates opportunities for local supply chains and manufacturers; limited supply capacity of the local industry leads to lack of economies of scale compared to imports; the South African solar PV industry gained significant traction in the past 20 years in general;

- SAPVIA believes that the 3-5 GW clearly outlined in the updated Integrated Resource Plan (IRP) per annum could attract investment into the country, developing supply and enhance value chain by deliberately designing and implementing fit-for-purpose industry incentives in collaboration with industry players;

- According to SAPVIA, it is worth noting that there were several manufacturing facilities established during the mid-2010s. However, due to policy uncertainty and delays in the implementation of some bid windows, the facilities had to close for commercial reasons;

- It is SAPVIA's view that a consistent market demand is required in order to stimulate the viability of such facilities as opposed to the introduction of a fiscal burden on the industry that passes through to the consumers. This would delay the introduction of much needed alternative energy sources to the energy mix;

- The current local assembly capacity is, at most, a quarter of the national demand and therefore a duty and a rebate in the immediate and short term will affect the roll-out of much needed generation capacity. As such, it is proposed that these be held in abeyance until the pressing and energy security challenges are resolved; and

- SAPVIA strongly proposes that the introduction of any duties be held in abeyance until thorough consultation with industry stakeholders.

FINDINGS

3. The Commission considered the application in light of all information at its disposal. In particular, the Commission considered the following factors:

   - The subject product is a crystalline silicon photovoltaic (PV) module or panel. A number of solar cells form a solar module or panel, which can then be combined to form solar power systems, ranging from a few watts of electricity output to multi-megawatt power stations;

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- The need to provide protection to the domestic industry which has invested heavily in manufacturing capacity, while at the same time balancing that with the need to avoid shortages in the supply of components that may slow down the energy-supply rollout plan.

- The recent disinvestment by a number of domestic manufacturers in the local manufacturing of the subject product. ARTsolar and Seraphim are the only two remaining manufacturers of the subject product in the SACU region. This is after Jinko Solar, Solaire Direct, SunPower Energy Systems Southern Africa, JApowerway and SMA Inventers Manufacturers ceased local production and resorted to importing the subject product. The major reasons for ceasing local production included, amongst others, high local manufacturing costs and high competition from low-priced imports; and

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The Commission concluded that in the event of shortages of solar panels in the domestic market, the temporary rebate provision may be used to mitigate risks of supply in the ordinary course of business, especially given the current electricity crisis in South Africa.

The Commission recommended that a temporary rebate provision be created for the importation of photovoltaic cells, assembled in modules or made up into panels, classifiable under tariff subheading 8541.43.

RECOMMENDATION

4. The Commission recommended the creation of a temporary rebate provision for the importation of photovoltaic cells, assembled in modules or made up into panels, classifiable under tariff subheading 8541.43, as follows:

"Photovoltaic cells, assembled in modules or made up into panels, classifiable in tariff subheading 8541.43, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, provided the subject goods are not available in the SACU market".