

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE: YES/NO	<input checked="" type="checkbox"/> YES
(2)	OF INTEREST TO OTHER JUDGES: YES/NO	<input checked="" type="checkbox"/> YES
(3)	DATE DELIVERED:	2018/12/19

Case number: 32263/14

In the matter between

FARM FRITES INTERNATIONAL	Applicant
and	

INTERNATIONAL TRADE ADMINISTRATION COMMISSION	First Respondent
THE MINISTER OF TRADE AND INDUSTRY	Second Respondent
MCCAIN FOODS (SA) (PTY) LTD	Third Respondent
NATURE'S GARDEN t/a NATURE'S CHOICE PRODUCTS (PTY) LTD	Fourth Respondent
LAMBERTS BAY FOODS LTD	Fifth Respondent
POTATOES SOUTH AFRICA	Sixth Respondent

JUDGMENT

BAM J

1. The applicant ("*Farm Frites*"), described in the founding affidavit as a company with limited liability with its head office at 3227 CD Oudenhoorn, Netherlands, is an entity involved in the export of potato chips from, amongst others, the Netherlands, to the RSA.

2. On 12 May 2014, at 14H00, the applicant brought this application on an urgent basis. The application, (Part A), concerned an interim interdict restraining the first respondent from finally rejecting the applicant's submissions and/or information regarding the issues of "*dumping*", (which I will explain below), pending a review (Part B of the application) of the first respondent's decision to regard the applicant's submissions in regards to dumping and treating the applicant as a non-cooperating interested party. The application was opposed by the first and second respondents. After having heard argument from counsel, on 13 May I made the order dismissing the application with costs, including the costs of two counsel. Due to time constraints, my judgment is not as comprehensive as what I would have preferred it to be. I indicated that I would make a written judgement available later.

3. The first respondent ("*ITAC*") is the commission established in terms of section 7 of the International Trade Administration Act, No. 71 of 2002, "*The Act*". The first respondent and the second respondent, ("*The Minister*") have extensive authority in terms of the Act to regulate the trade industry. The duties of the first respondent include the investigation of complaints pertaining to "*dumping*" in terms of the provisions of the Anti Dumping Regulations, ("*The Regulations*"). "*Dumping*" involves the situation where imported products in the South African market are sold at prices lower than in the exporting country. This situation, when it occurs, causes material prejudice to the domestic producers of those products. When a complaint is lodged in that regard, if there is *prima facie* evidence, a detailed investigation is conducted by ITAC in terms of the provisions of the Regulations.

4. The investigation has two stages.

A preliminary investigation is conducted by investigating officers who, after the investigation has been completed, make submissions to the commissioners of ITAC. All interested parties are notified about such investigation and are given the opportunity, and invited, to submit responses, which may be confidential. When the submissions advanced by an interested party are deemed to be deficient, the relevant party is given notice of the deficiencies and has 7 days to address same. If the submissions remain deficient, in accordance with the Regulations, it will not be considered by ITAC. A party who's submissions are deficient will be regarded as a non-cooperating interested party.

Once ITAC has published its preliminary finding, the final investigation follows. All interested parties are granted 14 days to comment in writing. Even non-cooperating interested parties may remedy their situation by addressing the deficiencies, which

will then be taken into account by ITAC. Provision is also made for oral hearings. ITAC then makes a final recommendation to the Minister who is enjoined to make an independent evaluation, and may accept or reject ITAC's recommendation. If the Minister has accepted ITAC's recommendation the issue is referred to the Minister of Finance for the implementation of the financial aspects.

5. A complaint in regards to dumping was lodged with ITAC by the third, fourth, fifth and sixth respondents. The applicant, who was an interested party, was duly invited to submit responses. The applicant submitted its responses. ITAC regarded the responses as deficient and the applicant was informed accordingly. The applicant conceded that its initial responses were in fact deficient. What occurred subsequently, is, to large extent, in dispute. The applicant averred that it did address the deficiencies. That was however denied by the respondents. The applicant made numerous adverse allegations against ITAC concerning the procedure followed and non-compliance with the provisions of the Act and the Regulations. What is however common cause is that ITAC would have concluded the final investigation on 13 May 2014, the day after the lodging of this application.

6. It was submitted by Mr Bergenthuin SC, appearing with Ms Granova for the applicant, that the applicant has made out a case for urgent relief for an interim interdict. It was emphasised by Mr Bergenthuin that the applicant will be severely prejudiced in the event of the application not succeeding, in that on 13 May 2014, ITAC, without considering all the information advanced by the applicant, would make a final recommendation to the Minister, and that the recommendation will be prejudicial to the applicant with dire consequences.

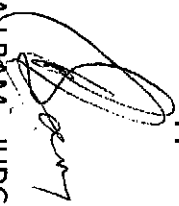
7. Mr Vorster SC, with Ms Muller, who represented ITAC and the Minister, submitted, *inter alia*, that the application was pre-mature in that the final recommendation of ITAC had not yet been made. There is no indication that ITAC's final recommendation to the Minister will be detrimental to the applicant.

8. Pertaining to the urgency of the matter, I find it difficult to understand why the applicant brought the application only at this stage. From the papers it appears that already on 17 February 2013 the applicant lodged an application for the review of ITAC's conduct pertaining to the dealing with the applicant's responses to the invitation in respect of the complaint laid by the third to sixth respondents. Although the applicant subsequently withdrew that review application, for reasons that are now disputed, the grounds for that review application seem to be the same grounds upon which the present application, and the *new* review application, are founded. What apparently triggered the present application is ITAC's averred indication that he applicant's deficient responses would not be considered at the time a recommendation to the Minister would become due.
9. The applicant in this application therefore expressed his grievances as an interested party in regards to a preliminary investigation conducted by ITAC.
10. Mr Bergenthuin submitted that the applicant's grounds for the review application are substantiated in the papers. This submission was strenuously countered by Mr Vorster. After having considered the issues and the arguments of counsel, I am of the opinion that the applicant does have reasonable grounds for review based on the alleged irrational actions. I do not deem it expedient to discuss all the submissions made by Mr Bergenthuin in that regard. The court eventually hearing the intended review will deal with those issues.
11. However, in my view, apart from the question of urgency, there are several other problems facing the applicant. The first issue pertains to the question whether this application is not premature. In this regard it was contended by Mr Vorster, convincingly in my view, that ITAC would only have considered the relevant issues on 13 May 2014, the day after the lodging of the application, and that it was still possible that ITAC's recommendation to the Minister could have been favourable to the applicant. A further point in that regard is that the Minister was enjoined to, independently, consider the recommendations of ITAC. It follows that in this matter the issue, as far as the applicant is concerned, would not have been finalized on 13 May 2014.

12. In my view the applicant's remedy in respect of his grievances, that ITAC did not deal with his case in a reasonable way, would indeed be an application for review. I have already remarked that the applicant's seems to have reasonable grounds. The interim relief claimed by the applicant may at the end of the day, if granted, may dispose of only part of its problem.

13. The argument advanced by Mr Bergenthuin that the applicant will be prejudiced if the interim relief is not granted, in view of the procedural delay to lodge the review application, is clearly not the only issue at hand. This, *per se*, therefore does not avail the applicant.

14. In my view the applicant failed to establish that the application could, at this point be brought on an urgent basis, as well as that the applicant did not establish that it has a *prima facie* right at this stage, before the matter has been finally considered and the applicant's submissions eventually rejected by the Minister.


A.J. BAM JUDGE OF THE HIGH COURT

16 May 2014