Steel and Engineering Industries Federation of Southern Africa

29 May 2023

Mr Mahendra Shunmoogam
Department of Trade, Industry and Competition
77 Meintjies Street, Block A, 1st Floor
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By Email: metalpolicy2023@thedtic.gov.za

Dear Mr Shunmoogam

SEIFSA SUBMISSION TO THE REQUEST FOR COMMENTS ON THE PROPOSAL TO PROHIBIT THE EXPORT OF CERTAIN FERROUS AND NON-FERROUS WASTE AND SCRAP METAL AND THE TEMPORARY SUSPENSION OF THE PRICE PREFERENCE SYSTEM INSOFAR AS IT RELATES TO CERTAIN FERROUS AND NON-FERROUS WASTE AND SCRAP METAL FOR A FURTHER PERIOD OF NINE MONTHS: NOTICE 1799 OF 2023

The Steel and Engineering Industries Federation of Southern Africa (SEIFSA) is the principal advocate for companies operating in the metals and engineering sector. SEIFSA as a Federation represents 18 Employer Organisations, who collectively represent in excess of 1 250 companies and employ approximately 170 000 employees in the sector.

The federations affiliated members constitute the entire metals value chain from metal production, merchants, metal fabrication, heavy and light engineering. This places SEIFSA in a prime position to provide perspectives from the upstream and downstream considerations as they relate to these scrap metal regulations. The proposals contained in

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these draft regulations on the export of scrap metal have material implications for the metals and engineering sector and to this end, we direct the ministry to our submissions below.

1 We refer to the publication -

1.1 on 30 November 2022, of the 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 (collectively, "**scrap metal**"), Government Gazette Notice 2802 of 2022 ("**export ban**");

1.2 on 15 May 2023, of the Draft Notice for Public Comment in relation to the above Notice 2802 of 2022, proposing an extension of the original export ban by a further nine months, Government Gazette Notice 1800 of 2023 ("**proposed export ban extension**").

2 We welcome the opportunity to provide comments on the proposed export ban extension and bring to the attention of the Minister of Trade, Industry and Competition ("**Minister**") and the Department of Trade, Industry and Competition ("**DTIC**") important effects and implications on various aspects of the steel industry.

3 Given the short period allowed for public consultation, our submissions are brief but nonetheless address issues of a critical nature which require serious consideration.

4 **Submissions**

<u>Balancing of (security) objectives versus (trade) effects</u>

4.1 Although the export ban is aimed at reducing theft in the rail and energy sectors, it gives rise to a drastic intervention in the steel industry. Within just six months, the export ban has had a significant negative effect on downstream steel industries which are reliant on steel products produced from scrap metal. The export ban has created oversupply and a consequent significant decrease in scrap metal prices, which has negatively affected the supply-and-demand balance in the affected downstream markets, unfairly changed the relative market strengths of industry participants in these markets and given rise to changed conditions of competition.

4.2 In contrast, there has been little measurable impact on the reduction of theft in the rail and energy sectors. According to some commentators, it is in fact unclear whether there is any material causal connection between the export ban and an apparent marginal decrease in theft.[1]

4.3 Accordingly, the export ban does not necessarily achieve its objectives - and has not done so in any consequential manner - but it has severe effects on industry. The export ban accordingly cannot be justified and it should not be extended. In any event, it is not proportional or appropriate given these considerations.

4.4 In section 5 below, we provide the DTIC and Minister with further information regarding the downstream effects of the export ban, which we urge be taken into consideration. It will be noted that these considerations are also important in the context of Government initiatives to promote beneficiation.

<u>A temporary measure</u>

4.5 The export ban was expressly promised to be a "temporary" intervention, for six months. This is not only appropriate but necessary for at least the following three reasons:

4.5.1 An export ban is a drastic intervention.

4.5.2 If an export ban affecting the steel industry was to be implemented in order to address theft in the rail and energy sectors (which we do not agree was rational to begin with), the export ban needed to be temporary because, self-evidently, it is not the most direct, appropriate and proportionate mechanism to reduce theft in the rail and energy sectors.

4.5.3 The export ban was intended to be temporary to enable a permitting and licensing regime could be put in place as a more direct measure to address theft. The failure to sufficiently develop alternatives in the interim does not justify a non-temporary (nine month) extension.

4.6 The proposed export ban extension will see the export ban extended by a period which is longer, by an order of magnitude of one and a half times the original period, resulting in an export ban for a further nine months over and above the original six months. Given that the export ban's six month operation has already had significant effects on the steel industry and the dynamics of competition, a nine month extension cannot be justified. This is more so in

[1] See recent statements by the Chief Commissioner of the International Trade Administration Commission (ITAC), Mr Ayabonga Cawe, noting that there have been increased security measured by rail providers and the energy utility which are likely to have caused some reduction in theft and that "[t]he evidence is mixed" as to whether this is attributable to the ban (Media24/City Press, 23 May 2023). Also see earlier predictions, based on fundaments and supply-demand principles, by Mr Donald MacKay, a trade expert at XA Global Trade Advisors (Business Day, 8 September 2022).

circumstances where there is limited evidence that the export ban has had the desired effect on theft.

<u>The ban should not be extended but, if extended, more holistic measures need to be considered</u>

4.7 The export ban should not be extended until the DTIC, International Trade Administration Commission (ITAC), industry and other applicable bodies have (a) acted responsibly in considering the impact that the export ban has had on the steel industry and (b) rationally and objectively considered and quantified the intended and unintended effects of the export ban against its (limited) ability to achieve its stated objective.

4.8 If the ban is extended, then -

4.8.1 this should be for a further period of no longer than three months; and

4.8.2 it must be in conjunction with an accompanying export ban on [billets], as scrap metal processors and other parties are simply using and installing billet processing facilities to convert scrap to billet, for export. In other words, the ban does not effectively reduce demand and opportunities for indirect exports as the underlying material is simply exported in the form of billets. In this regard please note that if South African exporters, export at a price well below the international prices, they are likely to face “anti-dumping allegations”; and

4.8.3 if there is any contemplation or consideration of a further extension, this should not be done without full consultation between DTIC, ITAC and industry, and appropriate independent economic experts should be involved to assess the positive and negative impacts of the export ban and the realistic prospects of the ban achieving its stated objective.

5 Information regarding effects on the steel sector

5.1 The export ban has increased domestic supply of scrap metal, significantly reducing the <u>domestic</u> price of scrap metal. Achievable domestic scrap metal prices are now at a significant (negative) differential to the international benchmark price previously determined by ordinary market forces.

5.2 However, the reduction in scrap metal prices has not resulted in **a commensurate** reduction in the <u>local price</u> of downstream steel products.

Accordingly, the export ban has caused four key fundamental effects which will be exacerbated by the proposed export ban extension -

5.2.1 first, legitimate suppliers of scrap metal, in particular those supplying "clean" scrap metal in the form of off-cuts from steel cutting, processing and fabrication (and other scrap metal sales), have seen a significant decrease in the prices which they are able to achieve for these by-products. However, given low margins in downstream steel markets, these producers of processed steel products are heavily reliant on revenue from these by-products. The unnecessary and unjustifiable discounted domestic prices puts margins under further pressure and places these business models at risk;

5.2.2 second, producers of liquid steel who use a significant proportion of scrap are making greater profits. This occurs because (a) as indicated above, the reduced input cost of scrap is not being passed on in terms of lower downstream steel prices and (b) the liquid steel producers are able to produce billets from scrap, which is not subject to an export ban, and can be exported at prices which remain benchmarked to international steel prices. (Billet production facilities are capable of installation with limited time and no prohibitive costs, and some liquid steel producers have commenced installation of these.) This is the likely reason why steel producers are not passing on reduced scrap prices through decreased steel product prices: they are able to export billets at higher international prices and, therefore, this opportunity cost disincentives reductions in prices for downstream steel products, the ban even more inordinately benefits firms that are vertically integrated steel producers and steel processors/installer;

5.2.3 third, local beneficiation is negatively affected; and

5.2.4 fourth, ArcelorMittal South Africa ("**AMSA**"), as a producer of primary steel primarily from iron ore, continues to be required to source iron order at prices benchmarked to international iron ore prices (and often higher than landed some export prices due to internal transportation inefficiencies). Accordingly, AMSA is put at a disadvantage relative to liquid steel producers using a significant proportion of scrap metal, and AMSA's competitiveness is placed at risk. As the DTIC will be aware, AMSA's financial and operational performance is already under strain while other primary steel producers (such as Highveld Steel) have previously failed. South Africa's economy and the steel sector in particular cannot afford the failure of AMSA. Accordingly, the export ban - aimed at reducing theft in the rail and energy sector - is placing a critical industrial sector at huge and disproportionate risk.

5.3 In short, the effect of the export ban has simply been to transfer already low profit margins from producers and suppliers of scrap (primarily, legitimate suppliers of scrap which have significant sunk and fixed costs[2]) to liquid steel producers, the latter of whom continue to have the option of exporting the processed scrap in the form of billets. Accordingly, these firms are simply making greater profit margins.

5.4 We further note that the downstream markets affected involve manufacturing and fabrication activities, as well as construction. These are labour-intensive markets, which mean they are important employers. In contrast, the export ban benefits producers of liquid steel from scrap metal, primarily improving their profits by reducing scrap metal input prices without a commensurate reduction in downstream steel product prices. These businesses are far less labour-intensive than the downstream manufacturing, fabrication and construction sectors. Accordingly, harm is created to businesses that have high levels of employment while benefits accrue to less labour-intensive businesses.

6 **Conclusion**

6.1 We respectfully submit that, having regard to objective and rational supply-and-demand considerations and the nature of the underlying security issue which was sought to be addressed by the original export ban, it was evident as early as September 2022 that there was (a) limited causal link between an outright export ban (a drastic market intervention) and the prospect of a reduction in domestic theft and (b) insufficient consideration given to the consequences (unintended or otherwise) of the export ban on supply, market conditions and competition in relation to downstream processed metal products reliant on scrap metal, including but not limited to reinforcing bar (rebar).

6.2 As Mr MacKay noted as far back as September 2022, the justification for the export ban as a measure allegedly "crucial" for reducing demand and prices and, in turn, curbing theft, is flawed:

> " *The thinking goes that if you curb the exports of scrap metal, you will flood the local market, suppressing the prices thieves can obtain for their stolen loot and thus disincentives the theft. But this makes three important assumptions, none of which is supported by evidence.*

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2 In contrast, illegal traders in steel would have low cost margins which, in any event, would effectively constitute variable costs if one considers their activities in terms of traditional business models. Accordingly, the export ban is likely to have limited or no direct or substantial effect on these illegal operations.

Firstly, that the stolen metal is traded at local market prices, or a reasonable derivative thereof, and secondly, if the price does drop in the illicit market, thieves won't steal more to make up the shortfall. Thirdly, it is assumed the thieves are accurately declaring their exports to customs, so their stolen material is affected by the ban."

" There is little evidence that the criminals develop a conscience when they need to declare their exports to Sars. I am not sure where the idea originated that when metal is stolen it is exported. Recyclers collect around 3.5-million tonnes of ferrous scrap and another 300,000 tonnes of non-ferrous scrap per annum. We then export about 496,000 tonnes of scrap metal (13%). If the assumption is correct that stolen material is being exported, which is not proven, then it is likely that no more than 13% is being exported as scrap metal."[3]

6.3 In contrast, as we have noted, the effect on the steel industry is significant. The effect of the six-month export on the industry is demonstrable (i.e. clear from actual industry experience). There is accordingly no further warrant for the extension of the export ban, which would be irrational.

6.4 Furthermore, as noted by Mr Cawe of ITAC, as a measure aimed at reducing theft, the export ban is also not a trade measure, yet it has the effects of a trade measure.[4] However, to our knowledge, there has been no objective and robust economic impact assessment of the export ban's impact on the industries which it affects. On the other hand, other measures (such as increased security) are obviously a more direct and proportional response. On these grounds, too, the extension of the export ban cannot be justified and will be irrational unless an evidence-based trade/regulatory impact assessment, on sound economic principles, has been conducted.

6.5 Accordingly, the proposal to extend the export ban is not rational, proportionate or appropriate. It will extend significant negative effects on affected downstream steel products and services (including disproportionate effects on different industry participants) with limited or no likely effect on reducing theft levels.

6.6 We urge the Ministry not to extend the export ban. If the ban is to be extended, it should be for no longer than three months while an urgent impact

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3 See Business Day, 8 September 2022, cited in footnote 1 above.

4 See Media24/City press, 23 May 2023, cited in footnote 1 above.

assessment occurs in relation to its effects. Further, if the ban is to be extended it is critical that an export ban also be imposed on the export of billets.

6.7 We trust that these submissions will be favourably considered.

Yours sincerely

Lucio Trentini

Chief Executive Officer

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