

6 December 2023

Director-General of Trade, Industry & Competition
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By email: scrapmetalpolicy2023@thedtic.gov.za

OBJECTIONS TO TRADE POLICY DIRECTIVE, CONTAINING PROPOSED EXTENSION OF THE EXPORT PROHIBITION OF CERTAIN FERROUS AND NON-FERROUS WASTE AND SCRAP METAL AND FURTHER DIRECTIVES (DATED 23 NOVEMBER 2023)

DEADLINE FOR SUBMISSIONS AND COMMENTS 7 DECEMBER 2023

1. We refer to the proposals of the Department of Trade, Industry and Competition ("DTIC") in the Government Gazette, Notice Number 2199 of 2023, Number 49765 dated 23 November 2023 ("Proposals").

2. Summary of Objections:

2.1 *Failure of the Export Prohibition to achieve its objectives:*

2.1.1 The current prohibition on the export of copper waste and scrap metal, ferrous waste and scrap metal ("Export Prohibition") envisaged as part of Phase 1 of the 30 November 2022 Policy Implementation actions on measures to Restrict and Regulate Trade in Ferrous and Non-Ferrous Metals Waste, Scrap and Semifinished Ferrous and Non-Ferrous Metal Products to Limit Damage to Infrastructure and the Economy ("the Policy") was intended to be a "temporary (six-month) prohibition".

2.1.2 Government has admitted at paragraph 5 of the Proposals reads:

"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".

2.1.3 DTIC alleges that the further regulations and extensions on the Export Prohibition are required because progress has been 'insufficient' and requires further attention, while at the same time wanting to allege that that its interventions are having a reducing effect on instances of theft of infrastructure is an incompatible position of the DTIC.

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2.1.4 The Policy states by the DTIC's and government's own admission, that entities engaging in in unlawful activities are not concerning themselves with the Regulations and Export Prohibition. Specifically, at paragraph 3.5.9.1 of the Policy:

"the Government understands that criminals and criminal syndicates may attempt to circumvent the more onerous registration system by, inter alia, smuggling stolen metals out of the country including via illegal land border crossings. This would undermine the policy proposals being considered and may lead to continued theft of metals from public and other infrastructure."

2.1.5 There are numerous reports in independent media of businesses reporting difficulties with maintaining and/or shutting down entirely, their operations amidst the again extended Export Prohibition.

2.2 Lack of industry engagement and consultation:

2.2.1 The Proposals arise after providing no substantive or meaningful engagement with the industry's roleplayers, businesses and affected persons, or the public in general.

2.2.2 Multiple interested parties, including the MRA, Steel and Engineering Industries Federation of Southern Africa ("SEIFSA"), the Shadow Deputy Minister of Trade and Industry, and other parties have addressed comprehensive correspondence to the DTIC and government objecting on the strongest terms to the Proposals, to which objections no substantive response appears to have been provided.

2.2.3 During the process of implementing the Policy and the Export Prohibition contained therein (and its extensions), opposition and submissions were made by various entities over a period of at least the previous 12 months and no responses were received from the DTIC thereto.

2.3 International Law:

2.3.1 In terms of the General Agreement on Tariffs and Trade (GATT 1947), of which South Africa is a signatory ("GATT") the prohibition on the export of certain products ought only to be imposed temporarily and to prevent or relieve critical shortages of such products, where such products are essential to the exporting country – South Africa (GATT, Article XI(2)(a)).

3. We confirm that we have engaged with SEIFSA and align ourselves with SEIFSA in the context of the objections that SEIFSA has raised directly with the DTIC, as well as publicly.

Sincerely,

MRA Administration

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