

Xikhovha Advisory (Pty) Ltd
Registration Number: 1999/015211/07
Lower Ground Floor Building 4, Manhattan Office Park,
16 Pieter Street, Highveld Technopark, 0157
Postal: PO Box 68642, Highveld Park 0169

+27 (0) 12 665 1271
info@xa.co.za
www.xa.co.za



NON-CONFIDENTIAL

23 February 2021

Mr. M Collins

International Trade Administration Commission

E: mcollins@itac.org.za

Dear Marius

MRA REQUEST FOR CLARITY ON THE CHANGES TO THE PRICE PREFERENCE SYSTEM FOR SCRAP METAL

1. All our previous correspondence on this matter refers.
2. We remind you of two salient dates: the MRA agreed to the compromise formula proposed by you on **Friday 19 February 2021 at 0800hrs**. Further, that the **15 days** for making offers on export permits circulated 5 February 2021 **expires** this Friday on **26 February 2021**. Thus, the February 2021 PPS price lists **should have been finalised and published before** the end of business today, i.e. **23 February 2022**, in accordance with the compromise you proposed and which our clients accepted.
3. With regard to your advice below on your email correspondence of 18 February 2021, at or about 15:20hrs:

"In the Government Gazette 43670, Notice 464 of 2020, dated 1 Sep 2020 ITAC published proposed amended guidelines and invited public comment, one of the proposed amendments were that average prices achieved during the previous day, week, two weeks, month, or quarter, where applicable, could be used for the calculation of the PPS.

No comments were received on the proposed amendment relating to the PPS price calculation formula and this particular amendment was implemented through Government Gazette 43765, Notice 532 of 2020, dated 2 Oct 2021 (the amended guidelines). ITAC will therefore publish the weekly calculation formula, with effect from 1 March 2021. "

4. For purposes of clarity and convenience, it is apposite to reiterate the chronology and legislative framework of the PPS. In short, on 10 May 2013, the Minister of Economic Development issued the *Policy directive on the exportation of ferrous and non-ferrous waste and scrap metal* - GN 470 of 10 May 2013: (Government Gazette No. 36451) (hereafter, 'the 2013 Trade Policy Directive'). On 17 December 2020, the Minister of Trade, Industry and Competition extended the 2013 Trade Policy Directive until 31 July



2021 in GN. NO. 1367 in Government Gazette Number No. 44008. The 2013 Trade Policy Directive is substantiated by a set of 'Guidelines'.

In short, the 2013 Trade Policy Directive was first supplemented by the *Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Waste and Scrap* - GNR.543 of **2 August 2013** (Government Gazette No. 36708) (**hereafter, 'the 2013 Guidelines'**).

The 2013 Guidelines were then replaced by the *Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Waste and Scrap* - GNR.1012 of **28 September 2018** (Government Gazette No. 41940) (**hereafter, 'the 2018 Guidelines'**).

On 1 September 2020, ITAC published the *Proposed amendments to the Price Preference System (PPS) Policy Guidelines* in Government Gazette No. 41940, Notice R. 1012 on 28 September 2018 on the exportation of ferrous and non-ferrous waste and scrap metal in Notice 464 of 2020 in Government Gazette No. 43670. The proposed amendment to the **2018 Guidelines** in respect of para 4.6, states the following, in *verbatim*:

"With regard to the calculation of the price preference at which the following grades of ferrous waste and scrap (excluding stainless steel) must be offered for sale to the domestic consuming industry the monthly average Metal Bulletin, fob Rotterdam price of heavy melting steel, HMS1&2 (80:20), will be used as a starting point for calculating the price preference for the ferrous grades referred to above."

It is prudent to reiterate here that these proposed amendments were being made to the **2018 Guidelines**. This is crucial in that the **2018 Guidelines** are of no legal consequence because they were in turn, **repealed and replaced (substituted)** by the *2020 Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Scrap* - Notice 532 of 2020 of **2 October 2020** (Government Gazette No. 43765). Thus, the **2018 Export Guidelines** are **not relevant to the PPS Formula, i.e.** Government Gazette No. 43670 is of no legal effect because it does not exist anymore.

5. We draw your particular attention to the abovementioned *2020 Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Scrap* - Notice 532 of 2020 of **2 October 2020** (Government Gazette No. 43765) (**hereafter, '2020 Guidelines'**), which repealed and replaced the **2018 Guidelines**. The **2020 Guidelines** at para 4.6 states the following:

*"With regard to the calculation of the price preference at which the following grades of ferrous waste and scrap metal (excluding stainless steel) must be offered for sale to the domestic consuming industry the **monthly average Metal Bulletin**, fob Rotterdam price of heavy melting steel, HMS1&2 (80:20), will be used as a starting point for calculating the price preference for the ferrous grades referred to above. [**own emphasis**]"*

You will note here that para 4.6 of the 2018 Guidelines is identical to para 4.6 of the 2020 Guidelines.

6. Subsequently, on **20 November 2020**, in Notice 663 of 2020, ITAC published the *Proposed amendments to the PPS Policy Guidelines* published in Government Gazette No. 43765, Notice 532 of 2020 on 2 October 2020 on the exportation of ferrous and non-ferrous waste and scrap metal, in **Government Gazette 43913**. This Gazette makes **no**



mention of an amendment to paragraph 4.6 of the 2020 Guidelines. Thus, paragraph 4.6 of the **2020 Guidelines remains unchanged** as stipulated above.

7. We, therefore, are unable to see where in the Government Gazette ITAC has published a notice of intention to change the PPS formula from one using the **monthly average Metal Bulletin, fob Rotterdam price of heavy melting steel, HMS1&2 (80:20)**, to a formula using the **previous week's Metal Bulletin**.
8. Please clarify this legal position and provide proof of such a change.
9. If the compromise formula referred to in paragraph 2 above has not been accepted by all parties, the default legal position is then that the price lists for February 2021 must reflect the formula as laid down in the 2020 Guidelines referred to in paragraph 5 above. Our clients require that in that event, the correct price lists, identical in the case of the two price lists published by ITAC on 8 February 2021, be published immediately.
10. Our client's rights are strictly reserved.

Regards

Donald MacKay
Director

This document has been sent electronically and is therefore not signed

E : donald@xa.co.za

T : 082 494 1019