



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

Directorate C – Africa, Caribbean and Pacific, Asia (II), Trade and Sustainable Development, Green Deal  
**Unit C1 - African, Caribbean and Pacific, Overseas Countries and Territories**

Brussels  
TRADE.C.1/MM/al (2022) 6431722

Dear Mr Shunmoogam,

The European Union would like to thank South Africa for the opportunity to submit comments on the draft Notice 1211 of 2022 concerning the Trade Policy Directive issued on the proposed six-month ban on the exportation of ferrous and non-ferrous waste and scrap metal.

The EU and EU business affected by the measure are concerned by the choice of the Ministry of Trade, Industry and Competition to ban the exports of ferrous and non-ferrous waste and scrap metal as a measure to prevent theft. Indeed, the Notice itself acknowledges that stolen metal can equally be either exported or used domestically, hence the EU would appreciate clarifications on the rationale of banning exports before putting in place at domestic level the necessary policy tools to regulate the sales and purchase of scrap metal.

In addition, a brief analysis of world exports of these products from South Africa does not seem to indicate any extraordinary increase for the year 2021, in particular comparing them to the 2018 and 2019 levels. In view of this, we would appreciate receiving explanations on the evidence pointing to the necessity to implement an export ban of these products.

We would also like to point out that in the list of products affected by this decision, we find metals that do not appear to relate to scrap: unwrought aluminium (7601), lead (7801), zinc (7901), tin (8001), tungsten (8101 94), molybdenum (8102 94), tantalum (8103 20), magnesium (8104 10) and many rare earth metals cumulated in the HS 8112. We would appreciate explanations for the inclusion of these materials in the list of products to be banned and how they relate to the stated objective to limit trade of scrap metals due to increased incidences of unlawful trade.

The EU is of the opinion that, until these regulatory policy controls are implemented in the South African market, stolen scrap and metals will continue to be sold in the domestic

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market, possibly at lower prices due to oversupply resulting from the export ban. This would in turn create an unfair advantage for the domestic users in relation to those abroad.

The ban is also doubtful from a WTO perspective since it seems to contravene key WTO provisions, namely:

- Article XI:1 of the GATT, which provides for the general elimination of quantitative restrictions, barring any prohibitions or restrictions made effective through quotas, import or export licences or other measures. An export ban is indeed effectively equivalent to setting a quota of zero.
- Article XI:2(a) of the GATT allows for export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party but the conditions do not appear to be met by the Notice concerned. The three conditions for the application of this exception are (1) temporal nature of the measure, with the (2) objective of preventing or relieving critical shortages of (3) products essential to the exporting contracting party. Condition (1) could possibly be met by the temporary nature of this ban (6 months). However, the EU is not aware of evidence of there being a critical shortage of the products affected by the ban. As noted above, there does not seem to have been a dramatic increase in the export of these products, which could have been a cause for a critical shortage. The EU has not seen other evidence of a critical shortage of the products affected by the ban. As the declared objective of the ban is to prevent theft this would also not appear to be meeting the conditions of Article XI:2a.

In the light of the above, the EU is of the opinion that the trade distorting measure is potentially in contravention of WTO obligations. It may be suggested to put in place the regulatory framework necessary to control the trade and circulation of scrap and metals inside South Africa, and if necessary, examine the need to ban exports.

The EU would like to thank South Africa once again for the opportunity to comment on its draft text. The EU looks forward to engaging further with the South Africa authorities to discuss this matter, in line with the spirit of transparency, communication and dialogue embedded in the Economic Partnership Agreement governing our trade relations.

Yours sincerely,

*(e-signed)*  
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