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GENERAL NOTICE

NOTICE 1808 OF 2004

I, Mandisi Mpahlwa, in my capacity as Minister of Trade and Industry, acting under the powers vested in me by section 59 of the International Trade Administration Act (Act 71 of 2002) hereby prescribe that –

REPUBLIC OF SOUTH AFRICA

THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION

SAFEGUARD REGULATIONS

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PREAMBLE

Parties are reminded of the following basic characteristics of safeguard measures:

- (a) A safeguard measure may only be imposed in response to a rapid and significant increase in imports of a product as a result of an unforeseen development, where such increased imports cause or threaten to cause serious injury to the Southern African Customs Union industry producing the like or directly competitive product;
- (b) A safeguard measure may be applied as a customs duty and/or a quantitative import restriction;
- (c) If a quantitative import restriction is used, it should not normally reduce imports below a level lower than the average during the preceding three years;
- (d) Safeguard measures are normally applied to imports from all countries even if the imports, which cause serious harm, originate mainly or only from one country;
- (e) A safeguard measure must be progressively liberalized at regular intervals throughout its period of validity;
- (f) A safeguard measure can only be in place for a period not exceeding 4 years, but the application thereof may be extended by up to 6 years under certain conditions, including that there must be a further liberalization of the measure;
- (g) Any safeguard measure imposed for a period exceeding 3 years must be reviewed at its halfway term.
- (h) A safeguard measure may not be re-imposed for a certain period after a safeguard measure had been in place on the same product;
- (i) If SACU introduces a safeguard measure its may be forced to compensate its trading partners affected by such measure;
- (j) The investigation of the merits of a safeguard measure and the implementation of a safeguard measure are subject to prescribed notifications and consultations between SACU, its trading partners and the World Trade Organisation.

1. Application of regulations

- 1.1 Safeguard investigations are conducted in terms of section 16 and 26 of the *Main Act*.
- 1.2 A definitive safeguard measure may be applied only where:

- (a) the Commission finds that the product under investigation is being imported into the Common Customs Area of SACU in such increased quantities, absolute or relative to SACU production, and under such conditions as to cause or threaten to cause serious injury to the SACU industry that produces like or directly competitive products, and as a result of unforeseen developments and of the effect of the obligations incurred by the Republic (or SACU) under the World Trade Organisation;
 - (b) such measures are required to facilitate adjustment in the SACU industry; and
 - (c) the SACU industry
 - (i) has submitted a detailed plan indicating how it plans to adjust to meet import competition; or
 - (ii) has submitted proof of restructuring that is being undertaken.
- 1.3 The Commission, in considering the recommendation of a definitive safeguard measure, may take into consideration the requirement of compensation to countries whose exports will be substantially affected by any safeguard measure.
- 1.4 Nothing in these regulations shall preclude the Commission from taking safeguard action provided for in terms of a free trade agreement concluded between the Republic or the SACU and any other country or customs territory. Any safeguard action so taken shall be taken in line with the terms and conditions agreed upon in such free trade agreement.
- 1.5 Nothing in these regulations shall preclude the Commission from taking special safeguard action in terms of any country's Protocol of Accession to the World Trade Organisation. Any safeguard action so taken shall be taken in line with the terms and conditions stated in the Protocol of Accession.
- 1.6 These regulations do not apply to agricultural goods in terms of which the Republic (or SACU) has reserved its right to apply a special safeguard measure contemplated in Article 5 of the WTO Agreement on Agriculture.

2. Definitions

“**Commission**” means the International Trade Administration Commission of South Africa established in terms of section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);