

**NOTICE 744 OF 2013****INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA****GUIDELINES AND CONDITIONS PERTAINING TO AN AGRICULTURAL SAFEGUARD APPLICATION IN TERMS OF ARTICLE 16 OF THE AGREEMENT ON TRADE, DEVELOPMENT AND CO-OPERATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND THE REPUBLIC OF SOUTH AFRICA**

Emanating from the Agreement on Trade, Development and Co-operation between the European Community and its Member States and the Republic of South Africa ("the TDCA"), Article 16 provides for safeguard action in defined circumstances.

The International Trade Administration Commission of South Africa (the Commission) has approved the attached reference and procedural guide pertaining to the application for safeguard action in terms of Article 16 of the TDCA.

Further information can be obtained from the Senior Manager: Trade Remedies I, Ms Carina Janse van Vuuren, at (012) 394 3594.



International Trade Administration Commission of South Africa

## **GUIDELINES AND CONDITIONS PERTAINING TO AN AGRICULTURAL SAFEGUARD APPLICATION IN TERMS OF ARTICLE 16 OF THE AGREEMENT ON TRADE, DEVELOPMENT AND CO-OPERATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND THE REPUBLIC OF SOUTH AFRICA (THE TDCA)**

### **1. PURPOSE**

- 1.1 The purpose of this document is to provide a reference and procedural guide pertaining to the application for safeguard action in terms of Article 16 of the TDCA.

### **2. SCOPE**

- 2.1 The scope of this document covers the application process by applicants for safeguard action in terms of Article 16 of the TDCA which provides as follows:

*“Notwithstanding other provisions of this Agreement and in particular Article 24, if, given the particular sensitivity of the agricultural markets, imports of products originating in one Party cause or threaten to cause a serious disturbance to the markets in the other Party, the Cooperation Council shall immediately consider the matter to find an appropriate solution. Pending a decision by the Cooperation Council, and where exceptional circumstances require immediate action, the affected Party may take provisional measures necessary to limit or redress the disturbance. In taking such provisional measures, the affected Party shall take into account the interests of both Parties.”*

### **3. PROCEDURE**

- 3.1 In order for the Department of Trade and Industry (**thedti**) to raise the matter of a serious disturbance in the Cooperation Council, it will need to have a case to present to the Cooperation Council, i.e. facts demonstrating that

imports from the EU are causing or threatening to cause a serious disturbance to the SA market. Further, if there is the need for immediate action pending a decision by the Council, a case will need to be made why exceptional circumstances exist that warrant such action. Facts supporting these allegations must be set forth in an application to the International Trade Administration Commission of South Africa (ITAC).

- 3.2 Prior to the submission of an application with ITAC, the industry concerned must lodge a request with the Minister of Trade and Industry to invoke the remedies under Article 16 of the TDCA.
- 3.3 Should the Minister of Trade and Industry be in agreement with the request to invoke the said remedies, the Minister will request the Minister of Economic Development to instruct the International Trade Administration Commission of South Africa (the Commission), in terms of Section 16(d)(i) of the International Trade Administration Act, 2002 (Act 71 of 2002) (ITA Act) to investigate and evaluate an application for agricultural safeguard action in terms of Article 16 of the TDCA.
- 3.4 The industry concerned must then submit an application to the Commission, in the prescribed form. The Commission will consider the application and if warranted, initiate an investigation and publish a notice in the *Government Gazette* for comment. A period of 20 days from the date of publication of the initiation notice will be provided for interested parties to submit comments to the Commission.
- 3.5 The rules relating to confidential information as contained in the ITA Act will apply to ALL correspondence, which unless clearly indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and be made available to other interested parties. A public file will be available for inspection at the Commission's offices by all interested parties, by appointment and interested parties are encouraged to inspect the public file regularly.

- 3.6 All interested parties will be informed of the essential facts to be considered by the Commission in making its preliminary determination. All interested parties will receive 7 days to comment on the essential facts. The Commission may grant parties a single extension on good cause shown. The Commission will take all relevant comments on the essential facts into consideration in its determination.
- 3.7 Taking comments into account, the Commission will then make a preliminary determination, which will form the basis for **thedti** to raise the matter in the Cooperation Council.
- 3.8 Should the applicant indicate that exceptional circumstances exist and the Commission so determines, it may, once **thedti** has raised the matter in the Cooperation Council, request the Commissioner for South African Revenue Service (SARS) to impose provisional measures. Such measures will take the form of a provisional safeguard duty.
- 3.9 The provisional measures will stay in place until such time a decision has been reached by the Cooperation Council.

#### 4. APPLICATION

- 4.1 Applications for safeguard action in terms of Article 16 of the TDCA must be addressed to the Chief Commissioner, International Trade Administration Commission of South Africa, Private Bag X 753, Pretoria or delivered by hand to the dti Campus (Block E), 77 Meintjies Street, Sunnyside, Pretoria, 0002.
- 4.2 Applications must be submitted according to the requirements reflected in the attached application form (See Annexure A).
- 4.3 Applicants should provide full and accurate information and wherever possible provide supporting documentary evidence from commercial or governmental

sources, e.g. commercial invoices or offers, official trade and production statistics. Failure to do so could detrimentally affect the case of the applicant. The Commission will not consider unsubstantiated information. All cost related information should be reconcilable to the financial statements or management accounts.

- 4.4 The Trade Remedies unit offers a public liaison service and if any party has particular problems in answering the questionnaire or requires more information or clarification on policy issues the staff of the Trade Remedies section are ready to discuss these issues and to provide assistance. Please feel free to contact Ms Carina van Vuuren (012 394 3594).
- 4.5 If the application is based in part on confidential material the application must contain a non-confidential version of the confidential material together with an explanation of why it is confidential. Section 33 of the ITA Act provides as follows:
- “(1) A person may, when submitting information to the Commission, identify information that the person claims to be information that –
    - (a) is confidential by its nature; or
    - (b) the person otherwise wishes to be recognized as confidential.
  - (2) A person making a claim in terms of subsection (1) must support that claim with -
    - (a) a written statement in the prescribed form-
      - (i) explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of “information that is by nature confidential” in section 1(2); or
      - (ii) motivating, in the case of other information, why that information should be recognized as confidential; and
    - (b) either –
      - (i) a written abstract of the information in a non-confidential form; or
      - (ii) a sworn affidavit setting out the reasons why it is impossible to comply with subparagraph (i).”

These summaries should be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. Therefore where confidential and non-confidential versions are supplied, parties must:

- (1) Indicate where information has been omitted in each case;
- (2) Provide reasons for confidentiality in each instance;
- (3) Provide a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information in each instance; and
- (4) Where information is not susceptible to a non-confidential summary, indicate this in each instance and provide a sworn affidavit setting out the reasons why the information is not susceptible to summarization.

A sworn affidavit is defined as a written sworn statement of fact voluntarily made by an affiant or deponent under an oath or affirmation administered by a person authorized to do so by law. Such statement is witnessed as to the authenticity of the affiant's signature by a taker of oaths, such as a notary public or commissioner of oaths. An affidavit is a type of verified statement or showing, or in other words, it contains verification, meaning it is under oath or penalty of perjury and this serves as evidence to its veracity and is required for court proceedings.

The Commission will not formally accept an application until a proper non-confidential version has been submitted in accordance with the above guidelines. If, in terms of section 34 of the ITA Act, the Commission finds that a request for confidentiality is not warranted and if the applicant is either unwilling to make the information public or to authorize its disclosure in summarized format, the Commission will not consider such information in determining the merits of the application.

Please take note that the rules relating to confidential information and the submission of non-confidential versions of submissions applies to ALL correspondence, which unless clearly indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and be made available to other interested parties. If a document is indicated to be confidential but a proper non-confidential document complying with the above-mentioned rules is not filed, then the document will not be taken into

consideration by the Commission. The public file is available for inspection at the Commission's offices by all interested parties, by appointment.

4.6 Note that interested parties are encouraged to inspect the public file regularly. The Commission and the Trade Remedies section will not check the public file on interested parties' behalf.

4.7 Information should be submitted in hard copies as well as in electronic format, such as on compact disks or flash disks. The Commission's computer system is based on Windows and it uses Excel and MS Word software. The disks must not be write protected and labeled clearly indicating:

1. Applicant's name;
2. Product(s) concerned;
3. Type of information on the disk;
4. Software used; and
5. Whether or not confidential.

4.8 The Commission may verify information submitted. Should it be found that the information submitted is false or misleading; the Commission may decide not to proceed with the investigation.

## **5. CONDITIONS**

5.1 South African producers representing at least 50% of the total volume produced by all producers that express an opinion on the investigation must support the application, and that a minimum of 25% (by production volume) of the total industry must support the application. Without this support ITAC cannot accept an application for investigation. Letters of support for or opposition to the application must be attached to the application as Annexure 5.1. Additionally, the Commission may not make a preliminary or final determination of serious disturbance unless it has considered evidence relating to "a major proportion" of the SA industry.

- 5.2 A like product is defined as "a product which is identical, i.e. is alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.", while a directly competitive product is a product, other than a like product, that competes directly with the product under investigation.
- 5.3 The following factors will be considered by the Commission in making a determination of serious disturbance:
- a. the rate and volume of the increase in imports of the product concerned from the EU
    - (i) in absolute terms; or
    - (ii) relative to the production and demand in SA; and
  - b. whether the SA industry is experiencing:
    - (i) price suppression;
    - (ii) price depression;
    - (iii) price undercutting/price disadvantage with regard to EU as well as other imports;
    - (iv) a decline in exports;
    - (v) a change in market share;
    - (vi) any other relevant factors placed before the Commission.

None of these factors listed above is necessarily decisive on its own.

The information requested must relate only to the affected SA product that is a like or directly competitive product to the product under investigation.

- 5.4 The South African industry should provide the information as requested in Annexure A.

ANNEXURE A

INTERNATIONAL TRADE ADMINISTRATION  
COMMISSION OF SOUTH AFRICA

APPLICATION FOR SAFEGUARD MEASURES IN TERMS  
OF ARTICLE 16 OF THE TDCA ON

[product]

**APPLICANT**

Name:

Address: