

DEPARTMENT OF TRADE AND INDUSTRY
NOTICE 725 OF 2018



International Trade Administration Commission of South Africa

1. INTRODUCTION AND DISCLAIMER

The International Trade Administration Commission of South Africa (“the Commission”) has drafted amended Guidelines (“the *Amended Guidelines*”) pertaining to the administration of rebate item 460.03/0207.14.9/01.07 (“the Rebate Item”), which provides for a quota-linked rebate of the full anti-dumping duty on frozen bone-in cuts of the species *Gallus Domesticus*, classifiable in tariff subheading 0207.14.9, imported from or originating in the United States of America. The Commission hereby invites interested parties to submit comments on the *Amended Guidelines*.

To assist interested parties wishing to comment on the *Amended Guidelines*, the Commission is providing, in addition to this document, a marked-up draft of the *Amended Guidelines* (a draft that is not marked-up will be available on the Commission’s website at www.itac.org.za). The marked-up draft of the *Amended Guidelines* identifies every change that is being proposed by the Commission, with additions indicated by underscoring (e.g. underscoring) and deletions indicated by strikethroughs (e.g. ~~strikethroughs~~). The Commission’s hope is that these two documents will assist interested parties in better understanding the purpose of the proposed amendments and that this will, in turn, help interested parties in the drafting of comments.

In reviewing this document, it should be noted that not all of the proposed amendments incorporated into the *Amended Guidelines* are discussed herein. Rather, this document identifies amendments that are substantively significant and that require clarification to avoid confusion over their intended purpose. Notwithstanding the narrow focus of this document, the Commission invites interested parties to comment on any aspect of the *Amended Guidelines*.

Finally, this document may not be cited to establish Commission practice or interpret, in any manner, the final version of the *Amended Guidelines*. This document does not undertake to provide a comprehensive interpretation of the amendments it identifies, which amendments are highly technical. Instead, this document merely identifies certain amendments and seeks to focus comments on different aspects of these amendments.

2. DISCUSSION

The amendments to the current Guidelines are largely informed by challenges that have arisen since the inception of the Rebate Item. Importantly, these challenges have negatively impacted on the effective administration of the Rebate Item by the Commission and the Department of Agriculture, Forestry and Fisheries (“DAFF”).

The major challenges that have arisen since the inception of the Rebate Item are (1) the proliferation in the number of applicants and (2) non-compliance with the Rebate Item and the Guidelines. These challenges have been addressed in various provisions of the *Amended Guidelines*. It is hoped that in addressing these challenges, as well as other issues, the Rebate Item can be administered more effectively, while at the same time continuing to ensure maximum utilisation of the quota under the Rebate Item.

2.2.1. Proliferation of applicants

According to statistics compiled by the Commission, the number of applicants increased from 29 applicants in Quarter 1 of the 2016/17 quota period to 105 applicants in Quarter 3 of the 2018/19 quota period. This represents an increase of approximately 262 per cent. This increase in the number of applicants is primarily attributable to an increase in the number HDI applicants, many of whom, it should be pointed out, are related in terms of marriage or consanguinity.

The proliferation of HDI applicants has meant that the average allocation of quota to an HDI participant under the Rebate Item is 1 or 2 containers (i.e. 27 or 52 tonnes) of bone-in cuts. It has been explained to the Commission by various parties that to enable HDI applicants to become sustainable a larger allocation for HDIs is required.

To address the issue of the proliferation, the Commission is proposing two amendments. First, the business plans of HDIs will be evaluated by the Department of Trade and Industry (“the dti”) instead of DAFF (see the provisions of **Paragraph 8** of the *Amended Guidelines*). The dti has the expertise to more fully scrutinise business plans with a view to identifying HDIs that have the experience and resources to enable them to become sustainable. The Commission is aware that this will add an additional layer to the application process. However, business plans present the best opportunity to identify sustainable HDIs and thereby create the potential for these to integrate into domestic poultry value-chains.

The second amendment addressing the issue of proliferation is the definition of “Related Applicants” (see the provisions of **Paragraph 7** of the *Amended Guidelines*). As noted above, many HDIs are related to one another in terms of their principals being related by marriage or consanguinity. The previous Guidelines had attempted to deal with the issue of related applicants. However, the provisions were not sufficiently comprehensive and the result has been a proliferation of applicants.

The *Amended Guidelines* draw upon provisions of the Companies Act, 2008 on related persons (natural or juristic). These provisions are well understood in South African law, and should assist applicants in determining whether they are related. It should be pointed out that related applicants are not barred from participation under the Rebate Item. However, they must disclose their related status and submit a single application. The goal of this amendment is to more effectively ensure a fair allocation among HDI applicants. Without this provision, there is likely to be a continued proliferation among HDI applicants, which may make sufficient allocations among these applicants impossible.

2.2.2. Non-compliance

In its administration of the Rebate Item, the Commission identified instances of non-compliance, the most concerning of which involved the transfer of benefits in contravention of the Rebate Item and the current Guidelines. Based on information obtained by the Commission, benefits accruing to HDIs under permits issued to them were improperly being transferred to parties not named in such permits.

To address this issue of non-compliance and provide a measure of guidance, new provisions have been added to the *Amended Guidelines*. Specifically, **Paragraph 6** of the *Amended Guidelines* identifies instances of prohibited transfers. The first provision of **Paragraph 6.2** explains that the permit holder must be the importer of the bone-in cuts (using the definition of "importer" found in the Customs and Excise Act, 1964). In essence, the holder of a permit must clear the imported bone-in cuts under applicable customs procedures. Stated differently, a permit holder may not sell bone-in cuts until after these have been cleared for consumption in South Africa.

The second provision deals with transactions between parties after the importation of bone-in cuts into South Africa and uses the concept of an arm's-length sale. This concept is used in connection with issues such as transfer pricing (tax matters) and trade measures (anti-dumping). Although it is not the Commission's intention, as a general matter, to second-guess pricing arrangements between parties, the Commission may use the sales price between parties together with other facts to determine whether there has been a prohibited transfer of benefits. In examining sales prices, the Commission may turn to publicly available sales data to interrogate this issue. By necessity, however, such an enquiry will be fact-specific, making it difficult to provide more detailed guidance.

3. CONCLUSION

The Commission encourages interested parties to familiarise themselves with the proposed changes in the *Amended Guidelines* and to submit comments during the comment period commencing on the publication date of this notice and ending on 21 December 2018. The intention of the Commission is to have the *Amended Guidelines* in effect for the new quota year (1 April 2019).

To ensure that interested parties have a full understanding of the proposed amendments, both in terms of what this will mean for the application process and the Commission's intention in making the amendments, the Commission intends to engage in stakeholder consultations on the *Amended Guidelines*. It is the intention of the Commission to hold such meetings during the first full week of December 2018. To this end, the Commission will send out invitations to interested parties.

Comments should be in writing and addressed to the following official, and may be submitted by hand-delivery, mail or electronically:

Senior Manager: Tariff Investigations 1

International Trade Administration Commission of South Africa

DTI Campus, Block E or Private Bag x753 or avarachia@itac.org.za

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Enquiries: Mrs Amina Varachia, at Tel: (012) 394-3732, e-mail: avarachia@itac.org.za; or Mr Alexander Amrein at Tel: (012) 394-3711, e-mail: aamrein@itac.org.za.

PUBLICATION PERIOD:

Comments should be received by the Commission no later than **21 December 2018**.

GUIDELINES FOR THE APPLICATION FOR A DAFF QUOTA ALLOCATION IMPORT PERMIT AND THE APPLICATION FOR A REBATE PERMIT IN TERMS OF REBATE ITEM 460.03/0207.14.9/01.07

THE REBATE

A temporary rebate of the full anti-dumping duty on - Frozen meat of the species Gallus domesticus, cut in pieces with bone in, classifiable in tariff subheading 0207.14.9 and imported from or originating in the United States of America, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission (ITAC) may allow by specific permit on recommendation of the Director General: Department of Agriculture, Forestry and Fisheries (DAFF), provided that -

- (a) With effect from 1 April 2016, permits may be issued by ITAC for meat imported in terms of this rebate;*
- (b) From the date this rebate item comes into operation up to and including 31 March 2016 meat imported in terms of this rebate items shall be on a first-come-first-served basis;*
- (c) The meat subject to the provisions of this rebate item may not exceed a basic annual quota of 65 000 metric tonnes;*
- (d) The annual quota period is 1 April to 31 March;*
- (e) Prior to 1 April 2016, the quota shall be 16 250 metric tonnes;*
- (f) As from 1 April 2017 an annual growth factor as determined by DAFF shall be applied to the basic quota mentioned in (c) above;*
- (g) The meat imported in terms of this rebate item may not be removed outside the Republic for consumption in any of the BLNS countries;*
- (h) The permit is not transferable and may not be used to obtain meat to the benefit of any entity or person not named in the permit issued by ITAC;*
- (i) This rebate item shall be suspended if any benefits that South Africa enjoyed under AGOA as at 1 November 2015 are suspended, and shall remain suspended for as long as those benefits under AGOA remain suspended; and*
- (j) This rebate item is suspended in terms of paragraph (i) as from the date the Minister of Trade and Industry submits written confirmation to the Minister of Finance that South Africa's benefits under AGOA have been suspended.*

SECTION A: GENERAL**1. DEFINITIONS**

- 1.1 **"AGOA"** means the African Growth and Opportunity Act as extended and amended by the Trade Preferences Extension of African Growth and Opportunity Act of 2015, as amended, substituted or novated from time to time.
- 1.2 **"AGOA Rebate Programme"** means the scheme administered by the International Trade Administration Commission of South Africa and the Department of Agriculture, Forestry and Fisheries that allocates the Annual Quota benefitting from a temporary rebate of the full anti-dumping duty on certain bone-in cuts imported from or originating in the United States of America ("U.S.A.").
- 1.3 **"Annual quota"** means a quota of 65 000 tonnes per Quota Year, subject to an increase in accordance with the provisions of paragraph 2.1.
- 1.4 **"Anti-dumping duties"** means the Anti-Dumping Duties in force on Bone-in cuts originating in or imported from the United States of America as listed in Schedule No. 2 Part 1 to the Customs and Excise Act.
- 1.5 **"Arm's length price"** means a price negotiated between independent parties, that is between a willing seller and a willing buyer, transacting on the open market.
- 1.6 **"Bone-in cuts"** means frozen meat of fowls of the species *Gallus domesticus*, cut in pieces with bone-in, classifiable under tariff subheading 0207.14.9.
- 1.7 **"Customs and Excise Act"** means the Customs and Excise Act, 91 of 1964, as amended, substituted or novated from time to time.
- 1.8 **"BBBEE Act"** means the Broad Based Black Economic Empowerment Act, 53 of 2003, as amended, substituted or novated from time to time.
- 1.9 **"DAFF"** means the Department of Agriculture, Forestry and Fisheries or its successor.
- 1.10 **"DAFF Average"** means the average of the poultry production and consumption figures for South Africa in a financial year published by DAFF in March of each year.
- 1.11 **"the dti"** means the Department of Trade and Industry or its successor.

- 1.12 **"Effective Date"** means the date on which the amendment in Schedule No. 4 to the Customs and Excise Act, is published in the Government Gazette to provide for a rebate of the full Anti-Dumping Duties on bone-in cuts payable in terms of Schedule No. 2 to the Customs and Excise Act.
- 1.13 **"HDIs"** means Historically Disadvantaged Individuals as defined in the Broad Based Black Economic Empowerment Act, 53 of 2003, as amended, substituted or novated from time to time.
- 1.14 **"HIs"** means historical importers, which are importers which were importing bone-in cuts and/or other chicken products prior to the Effective Date.
- 1.15 **"Importer"** includes any person who at the time of importation –
- 1.15.1 owns any goods imported;
 - 1.15.2 carries the risk of any goods imported;
 - 1.15.3 acts as if he represents or is the importer or owner of any goods imported;
 - 1.15.4 actually brings any goods into South Africa;
 - 1.15.5 is beneficially interested in any way whatsoever in goods imported; or
 - 1.15.6 acts on behalf of a person referred to in paragraph 1.15.1, 1.15.2, 1.15.3, 1.15.4 or 1.15.5.
- 1.16 **"ITAC"** means the International Trade Administration Commission of South Africa or its successor.
- 1.17 **"ITA Act"** means the International Trade Administration Act, 71 of 2002, as amended, substituted or novated from time to time.
- 1.18 **"Person"** means, depending on the context, a natural person (individual) or a juristic person.
- 1.19 **"Quarter"** means each period of 3 calendar months commencing on 1 April, 1 July, 1 October and 1 January in each calendar year.
- 1.20 **"Quarterly Quota Utilisation Report"** means a report reflecting the actual usage of quota received.
- 1.21 **"Quarterly Quota"** means 1 quarter of the annual quota, subject to the provisions of paragraph 2.2.
- 1.22 **"Quota Year"** means a period of four consecutive Quarters commencing on 1 April in each calendar year and ending on 31 March in the subsequent

calendar year. The first Quota Year shall be deemed to have commenced on 1 April 2016 and ended on 31 March 2017.

- 1.23 **“Quota”** means imports of bone-in cuts benefitting from a temporary rebate of the full anti-dumping duty, subject to both the annual quota and quarterly quota.
- 1.24 **“Related”**, when used in respect of two persons, means persons who are connected to one another in any manner contemplated in paragraph 7.
- 1.25 **“SARS”** means the South African Revenue Service.

2. THE QUOTA

- 2.1 The Quota will increase with effect from 1 April in each calendar year, commencing on 1 April 2017 by the percentage, if any, by which the DAFF Average for the calendar year immediately preceding the calendar year in which that month falls (the "Relevant Year") has increased from the DAFF Average for the calendar year immediately preceding the Relevant Year, provided that:
- 2.1.1 if there is a decrease in the DAFF Average for the Relevant Year from the DAFF Average for the year immediately preceding the Relevant Year (the "Base Year"), the Quota then in force will not be decreased; and
- 2.1.2 for the purposes of determining any future increase in the Quota, the Base Year shall be used as the basis for determining any such increase until there is an increase in the DAFF Average for the Relevant Year when compared with the DAFF Average in the Base Year, where after the provisions of paragraph 2.1, but for this proviso, shall apply. For the avoidance of doubt, if there is no such increase, the Quota then in force shall continue to apply.
- 2.2 The following provisions shall apply to the Quota to avoid volatility in the market:
- 2.2.1 if any portion of the Quarterly Quota is not used in the first Quarter of a Quota Year commencing on 1 April, the unused portion of the Quarterly Quota may be used only in the second Quarter of the Quota Year commencing on 1 July;

- 2.2.2 any portion of the Quarterly Quota for the first and second Quarters of each Quota Year commencing respectively on 1 April and 1 July, not used by 30 September shall be forfeited;
 - 2.2.3 if any portion of the Quarterly Quota is not used in the third Quarter of a Quota Year commencing on 1 October, the unused portion of the Quarterly Quota may be used only in the fourth Quarter of the Quota Year commencing on 1 January;
 - 2.2.4 any portion of the Quarterly Quota for the third and fourth Quarters of each Quota Year commencing respectively on 1 October and 1 January, not used by 31 March shall be forfeited;
 - 2.2.5 any quotas forfeited at the end of Quarter 2 of the Quota Year may be re-allocated at the end of the third Quarter of the Quota Year for utilisation in Quarter 4 of the Quota Year; and
 - 2.2.6 any portion of the Quota in each Quota Year, not used at the end of a Quota Year shall be forfeited.
- 2.3 Should the Minister of Trade and Industry determine that any benefits that South Africa enjoyed under AGOA as at 1 November 2015 have been suspended, the AGOA Rebate Programme shall be suspended in line with applicable legislation and shall remain suspended for as long as those benefits under AGOA remain suspended.
- 2.4 The Quota is implemented by rebate item 460.03/0207.14.9/01.07 ("the Rebate Item"). The Rebate Item came into force on the Effective Date.
- 2.5 Neither the Quota nor the Rebate Item will affect the payment of any other duties or taxes applicable to the importation of Bone-in Cuts, nor the import requirements in terms of any applicable legislation.
- 2.6 Neither the Quota nor the Rebate Item may be used in any sunset or interim review of the Anti-Dumping Duties or otherwise to support any argument that the Anti-Dumping Duties should not be renewed, terminated, reduced or otherwise amended.

3. PURPOSE

Under the AGOA Rebate Programme, the Quota is allocated to HDIs and HIs. These Guidelines seek, in part, to ensure there is a fair allocation of the Quota among all applicants.

4. ELIGIBILITY

To participate in the AGOA Rebate Programme and be eligible for a quota allocation import permit from DAFF and a rebate permit from ITAC, an applicant must, in addition to any other requirements contained herein –

- Be a South African citizen with a valid identity document or a company with a valid certificate of registration/incorporation in South Africa;
- Have a valid SARS tax clearance certificate;
- Be registered at SARS as an importer; and
- In the case of HIs, be fully BBBEE compliant.

5. THE APPLICATION PROCESS

The AGOA Rebate Programme application process involves three sequential steps, meaning that an applicant must meet all the requirements of each of the following steps to obtain the permits necessary for the importation of bone-in cuts under the AGOA Rebate Programme:

- 5.1 The first step in the process involves only HDIs. HDIs must submit a business plan to the dti (see Section B for details). Only if the dti approves its business plan, will an HDI be able to proceed to step 2 of the application process described in paragraph 5.2.
- 5.2 The second step in the application process involves the submission of an application (which includes an affidavit) for a quota allocation import permit to DAFF (see Section C for details). For HIs, this is the first step in the application process. Only once the quota allocation import permit has been issued by DAFF can applicants proceed to the third step of the application process described in paragraph 5.3.
- 5.3 The third and final step in the application process requires applicants (both HIs and HDIs) to submit an application (which includes an affidavit) for a rebate permit to ITAC (see Section D for details).
- 5.4 Notwithstanding anything to the contrary herein, as part of the DAFF and ITAC application processes set out in Sections C and D, respectively, either may require submission of any document that is part of the other's application process. The failure to furnish the required document to DAFF or ITAC, as applicable, may result in a rejection of the application.

5.5 Where the Guidelines require the submission of a document, the document submitted must be an original or a certified copy of the original, unless indicated otherwise.

6. TRANSFER OF PERMITS

6.1 Permits issued by DAFF and ITAC under these Guidelines are not transferable, which includes, but is not limited to, the transfer of the Quota obtainable under a permit, to any person not named in the permit.

6.2 A prohibited transfer under paragraph 5.1 includes, but is not limited, to the following:

- Where the permit holder is not the importer of the bone-in cuts imported under the AGOA Rebate Programme; or
- Where the sale of the bone-in cuts by a HDI to a third party is not at an arm's-length price.

7. RELATED APPLICANTS

7.1 A purpose of the provisions of this Paragraph is to enable a fair allocation of the Quota.

7.2 Related persons may not apply for a Quota under the AGOA Rebate Programme, except as provided for in paragraph 7.7.

7.3 In terms of paragraph 7.2, an individual is related to another individual if they -

7.3.1 are married, or live together in a relationship similar to a marriage; or

7.3.2 are separated by no more than three degrees of natural or adopted consanguinity or affinity;

7.4 In terms of paragraph 7.2, an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with paragraph 7.6.

7.5 In terms of paragraph 7.2, a juristic person is related to another juristic person if—

7.5.1 either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with paragraph 7.6;

- 7.5.2 either is a subsidiary of the other; or
- 7.5.3 a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with paragraph 7.6.
- 7.6 For the purposes of paragraphs 7.4 and 7.5, a person controls a juristic person, or its business, if –
- 7.6.1 in the case of a juristic person that is a company –
- 7.6.1.1 that juristic person is a subsidiary of that first person; or
- 7.6.1.2 that first person together with any related or inter-related person, is –
- 7.6.1.2.1 directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
- 7.6.1.2.2 has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board;
- 7.6.2 in the case of a juristic person that is a close corporation, that first person owns the majority of the members' interest, or controls directly, or has the right to control, the majority of members' votes in the close corporation;
- 7.6.3 in the case of a juristic person that is a trust, that first person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or
- 7.6.4 that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph 7.6.1, 7.6.2 or 7.6.3.
- 7.7 Notwithstanding paragraphs 7.1 through 7.6 –
- 7.7.1 a person may be exempted from the application of this provision on related applicants if the person can show that, in respect of that particular

matter, there is sufficient evidence to conclude that the person acts independently of any related or inter-related person;

7.7.2 where related persons seek to participate in the AGOA Rebate Programme, they must submit –

7.7.2.1 a single business plan to the dti;

7.7.2.2 a single application, including a duly completed affidavit, for a quota allocation import permit to DAFF; and

7.7.2.3 a single application, including a duly completed affidavit, for a rebate permit to ITAC.

7.8 Examples of related persons include, but are not limited to, the following:

7.8.1 Companies which have common directors or owners;

7.8.2 Companies of which the directors or owners are relatives. A relative of a natural person includes, but is not limited to that person's spouse and anyone related to that person within the third degree of consanguinity, that is children, grandchildren great-grandchildren, grandparents, great-grandparents, brothers, sisters, nephews, nieces, uncles and aunts;

7.8.3 Notwithstanding anything to the contrary, companies which, based on all available evidence, have been structured, in part or in whole, to defeat the purpose of this provisions on related applicants.

SECTION B: THE DTI PROCESS

8. SUBMISSION OF BUSINESS PLANS BY HDIs

8.1 HDIs applying for Quota must submit a business plan to the dti prior to the commencement of a Quota Year, or at such other times as may be required by the dti.

8.2 Notwithstanding paragraph 8.1 where a business plan has been accepted under Paragraph 8.5 a HDI does not have to submit a business plan for a new Quota Year unless required by the dti.

8.3 The failure to submit a business plan by the deadline provided for in paragraph 8.1, or an acceptable business plan as provided for in paragraphs

8.4, 8.6 and 8.7 shall disqualify the HDI from participation in the AGOA Rebate Programme Quota for the relevant year.

8.4 The business plan referred to in paragraph 8.1 must demonstrate the sustainability of the business in the long term. Information included in the business plan must substantiate at least the following:

- access to cold chain logistics (sea and land transport and storage);
- access to finance and insurance;
- sales arrangements with US producers of bone-in cuts; and
- arrangements with freight forwarders for the shipping of bone-in cuts from the United States of America to South Africa.

8.5 The dti shall inform an HDI in writing whether its business plan has been accepted.

8.6 The dti shall not accept a business plan where –

(a) A business plan fails to demonstrate to the satisfaction of the dti that the HDI will mature into a sustainable business based on, amongst others, the criteria set forth in paragraph 8.4, or

(b) A business plan is determined to be deficient because certain information or sufficient information has not been provided.

8.7 If the dti determines that a business plan is deficient in terms of paragraph 8.6(b), the applicant will be informed in writing of the deficiency and the time period within which to submit additional information to the dti. Failure to correct any deficiency within the specified period will result in a final rejection of the business plan.

9. RESPONSIBILITIES AND CONTRAVENTIONS

9.1 The issuing of quota allocation permits and rebate permits by DAFF and ITAC, respectively, is discretionary and is subject to the availability of quota, as well as an applicant complying with all applicable requirements. In line with such considerations, applicants are advised, amongst others, to be in possession of a quota allocation permit and a rebate permit prior to shipping bone-in cuts from the U.S.A.

- 9.2 Bone-in cuts subject to these Guidelines that are cleared without a valid DAFF quota allocation import permit and ITAC rebate permit, shall subject the importer to the payment of anti-dumping duties;
- 9.3 Contraventions of the provisions of the ITA Act and/or the Customs and Excise Act may result in the withdrawal or cancellation of the ITAC rebate permit and/or the seizure of products being imported under said permit and/or may result in criminal prosecution and/or other sanctions in terms of the ITA Act and/or the Customs and Excise Act.

SECTION C: DAFF PROCESS

10. QUOTA ALLOCATION

- 10.1 Applications for quota allocation import permits must be submitted to DAFF (see Annexure A).
- 10.2 A minimum of fifty per cent of the Annual Quota will initially be allocated to HDIs as set out in Paragraph 10.4 below. This percentage can be reviewed and adjusted from time to time.
- 10.3 The portion of the Annual Quota that has not been allocated to HDIs in terms of paragraph 10.2 will be allocated to HIs as set out in paragraph 10.4 below.
- 10.4 The allocation of the Quota for HDIs and HIs will be done on the basis of the Permit Allocation System, which takes into account the following variables:
- a) The market share of existing importers, which will be derived from historical data;
 - b) Quota allocations in multiples of 27 tonnes (i.e. a full container);
 - c) Quota applied for by applicants;
 - d) Number of applicants; and
 - e) The Quota available.
- 10.5 A notice relating to the allocation of the Quota will be published in the Government Gazette during the third Quarter of each Quota Year. The notice will invite all interested parties to submit their applications for quota allocation import permits to be issued by DAFF under the Quota for the next Quota Year. The import permit issued by DAFF under the Quota will be valid for a period of three months.

11. SUBMISSION OF DOCUMENTS

11.1 To be considered for a quota allocation import permit, an applicant must furnish DAFF with –

- An original duly completed and signed application and affidavit in the form of Annexure A; and
- A valid veterinary import permit, as required by Section 13(1)(a) of the Meat Safety Act, 40 of 2000.

11.2 If all the information requested in the application form and the affidavit is not submitted, the application will be deemed to be deficient. If DAFF determines that an application is deficient, the applicant will be informed of the deficiency and of the time period within which to submit a corrected application and/or affidavit to DAFF. Failure to correct any deficiency within the specified period will result in the application not being considered.

11.3 The application form is available electronically from DAFF, on request, from the contact provided in paragraph 11.12.

11.4 In addition to the documents required in terms of subparagraph 1, HIs must submit the following:

- Documents for the last three (3) years, or an otherwise motivated timeframe, which will prove that the entity applying is an established company and not a dormant company or a company that is not in a financially sound position (e.g. Imports by Bill of Entry number, Balance Sheet, Income and Cash Flow statements); and
- Documentation to prove its BBBEE status in terms of the BBBEE Act and Code.

11.5 In addition to the documents required in terms of subparagraph 1, HDIs must submit the following:

- A Curriculum Vitae/profile of the applicant;
- If a company applies, proof that it is wholly owned by HDIs, including certified copies of share certificates and a BBBEE verification certificate by an accredited rating agency, or similar document, to confirm its BBBEE status;
- If a company in partnership with an HDI applies, proof that the HDI is the majority shareholder of this company, including certified copies of share certificates and share register, and a BBBEE verification certificate by an accredited rating agency to confirm its BBBEE status;

- Letters of intent from the buyers of imported meat; and
 - Indication of ability and capacity to import a minimum of 135 tonnes (i.e. 5 full containers) of bone-in cuts in a single consignment.
- .
- 11.6 Completed application forms in terms of paragraph 11.1 must be submitted to DAFF during the following time periods:
- a) For the First Quarter of the Quota Year valid for importation during the period 01 April to 30 June: Within four weeks from the date of publication referred to paragraph 10.5 above.
 - b) For the Second Quarter of the Quota Year valid for importation during the period 01 July to 30 September: From 01 to 31 May.
 - c) For the Third Quarter of the Quota Year valid for importation during the period 01 October to 31 December: From 01 to 31 August.
 - d) For the Fourth Quarter of the Quota Year valid for importation during the period 01 January to 31 March: From 01 to 30 November.
- 11.7 Applications for extensions of import permits (“extension permits”) issued by DAFF under the Quota are subject to the provisions of paragraph 2.2 and will only be considered for permits issued for the First and the Third Quarters. No extension longer than three months will be granted.
- 11.8 Requests an extension of import permits issued for the First Quarter must be made during a period commencing on the 1st day of the Second Quarter and ending 12 working days before the last day of the Second Quarter and extension permits must be fully utilised during the Second Quarter. Requests for an extension of import permits issued for the Third Quarter must be made during a period commencing on the 1st day of the Fourth Quarter and ending 12 working days before the last day of the Fourth Quarter and the extension permits must be fully utilised during the Fourth Quarter. Where the last day of such periods falls on a weekend or a public holiday, the final day to request an extension is the immediately preceding working day.
- 11.9 Where a permit holder has been issued an extension permit, but according to SARS’ records the permit holder has fully utilised the original quantity specified in a permit issued for the First Quarter or the Third Quarter, the permit holder may receive a lesser allocation in future quarters equal to the quantity specified in the extension permit.
- 11.10 Applicants must submit a Quarterly Quota Utilisation Report to DAFF, 7 days into the ensuing Quarter in the format as determined by DAFF.

- 11.11 Applicants who wish to submit an application for an extension permit must do so in the format as determined by DAFF.
- 11.12 The applications and documents referred to in this paragraph must be hand delivered to the following address from 08H00 – 16H00 Monday to Friday:

Sefala building, Room No. 715,
503 Belvedere Street, Arcadia, Pretoria,
Contact person: Ms. Elizabeth Matlala
Contact number: (012) 319 8076
Email: ElizabethMA@daff.gov.za

12. FEES FOR THE DAFF QUOTA ALLOCATION IMPORT PERMIT

- 12.1 The fees payable will be prescribed by DAFF annually by publication in the Government Gazette.
- 12.2 All application forms should be accompanied by proof of payment (bank deposit slip or cashier receipt).

Payment is to be made as follows:

Payment to Department of Agriculture, Forestry and Fisheries bank account:

Bank: Standard Bank
Branch: Arcadia
Branch No: 01-08-45
Account No.: 013024175
Account Name: NDA: Marketing Administration-Trade Incentives

OR

Payment in cash:

Department of Agriculture, Forestry and Fisheries Cashier, Pretoria
Agricultural Place, 20 Steve Biko Drive,
Arcadia,
Block S: Room GF 14

Payment must be made per application period and no payments should be made in advance for another period.

SECTION D: ITAC PROCESS

13. SUBMISSION OF DOCUMENTS

- 13.1 After issuing of a quota allocation import permit to an applicant, DAFF will send a recommendation, including a copy of the quota allocation import permit, to ITAC.
- 13.2 Applications for a rebate permit can be submitted to ITAC only after an import permit from DAFF has been obtained.
- 13.3 To be considered for a rebate permit, an applicant must furnish ITAC with –
- An original duly completed and signed application and affidavit in the form of Annexure B.
- 13.4 Applications for rebate permits must be addressed to the Senior Manager: Tariff Investigations 1, 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.
- 13.5 At least seven (7) working days should be allowed for the issuing of permits where ITAC has received a duly completed application form.
- 13.6 If all the information requested in the application form and the affidavit is not submitted, the application will be deemed to be deficient. If ITAC determines that an application is deficient, the applicant will be informed of the deficiency and of the time period within which to submit a corrected application and/or affidavit to ITAC. Failure to correct any deficiency within the specified period will result in the application not being considered.

14. REBATE CONDITIONS

The following conditions apply to rebate permits issued by ITAC:

- 14.1 Each rebate permit issued defines the quantity of the products and the period during which the products concerned can be cleared under the applicable rebate item. Rebate permits will be issued only for the corresponding period for which the DAFF quota allocation import permit has been issued.
- 14.2 Applications for extensions, endorsement or amendment of rebate permits will be considered only if the corresponding DAFF quota allocation import permit has been extended, endorsed or amended. No rebate permit will be extended for a period longer than that for which the corresponding DAFF quota allocation import permit has been extended.

- 14.3 None of the products entered under a rebate permit issued in terms of these guidelines may be removed, sold or otherwise be disposed of in the Republic of Botswana, Kingdom of Lesotho, Republic of Namibia or the Kingdom of eSwatini (formerly Kingdom of Swaziland).
- 14.4 Quotas will not be re-instated or re-allocated in certain instances. For example: where products were intended for home consumption and cleared as such and the available Quota was written off but later changed to an export transaction (for example, warehoused for export, duty paid ex warehouse, etc.) such written off Quota will not be re-instated or re-allocated.
- 14.5 Only products described in the rebate permit may be imported.
- 14.6 The rebate permit is issued without amendments of any kind and any unauthorised amendment will render the permit invalid.
- 14.7 Nothing in these Guidelines shall absolve an importer from the obligation of also complying with the provisions of any other legislation relating to the importation of products into the Republic of South Africa.
- 14.8 ITAC may require additional information and/or documentation in order to make informed decisions and to ensure sound administration of the Rebate Item. ITAC officials may at any time inspect premises, documentation or imported products for compliance.

ANNEXURE A



APPLICATION FORM FOR A DAFF QUOTA ALLOCATION IMPORT PERMIT FOR A QUARTERLY QUOTA UNDER REBATE ITEM 460.03/0207.14.9/01.07

(Please note that an application form is necessary for each product)

1. **NAME OF IMPORTER:**.....
2. **POSTAL ADDRESS:**..... **CODE:**
3. **PHYSICAL ADDRESS:**.....**CODE:**.....
4. **RESPONSIBLE PERSON:**
5. **TELEPHONE NUMBER: CODE: NUMBER: CELL NO.:**.....
6. **FAX NUMBER: CODE: NUMBER:**
7. **E-MAIL ADDRESS:**
8. **LOCATION OF THE BUSINESS**

PROVINCE	LOCAL MUNICIPALITY	DISTRICT

9. **COMPANY/CC REGISTRATION NUMBER:**
(NB: First time applicants: Please include a copy of the registration certificate (obtainable from the Companies and Intellectual Property Commission (CIPC))
10. **CUSTOMS CODE NO:**.....
(NB: First time applicants: Please include a copy of the Customs Code Certificate (obtainable from SARS))
11. **SARS TAX CLEARANCE CERTIFICATE NUMBER AND DATE:**
(NB: Please attach the copy of the SARS Certificate-applicable to all applicants)
12. **INDICATE PRINCIPAL BUSINESS THAT YOU UNDERTAKE:**

AGENT	MANUFACTURER	PROCESSOR	RETAILER	OTHER

IF other please specify.....

13. For classification please complete:-

ENTERPRISE CLASSIFICATION	
LARGE	
QSE	
EME	
HDI	
Investment (Financial and Human)	
Turnover in Rand	R
Capital Investment	R
Number of permanent employees	
Number of part-time employees	

14. APPLICATION – SUBMISSION FOR THE PERIOD

TARIFF HEADING OF PRODUCT	DESCRIPTION OF PRODUCT	QUANTITY APPLYING FOR: Tonnes / Litres

15. Summary of BILLS OF ENTRY IMPORT

Quantity imported over the past 1, 2 or 3 years.

TARIFF HEADING	TOTAL FOR 2017	TOTAL FOR 2016	TOTAL FOR 2015

16. INDICATE PAYMENT OPTION IN ACCOUNT NO. 013024175 AND ATTACH PROOF OF PAYMENT	BANK	CASH RECEIPT NO
	

17. PLEASE ATTACH THE FOLLOWING DOCUMENTS TO THIS APPLICATION FORM:

- 17.1 A copy of the applicant's valid South African identity document (if the applicant is a natural person) or a valid certificate of registration or incorporation in South Africa (if the applicant is a juristic person);
- 17.2 A copy of the applicant's valid veterinary import permit as required by section 13(1)(a) of the Meat Safety Act, 40 of 2000;
- 17.3 A copy of the applicant's valid SARS tax clearance certificate; and
- 17.4 Proof that the applicant is registered with SARS as an importer.

18. IN ADDITION TO THE DOCUMENTS LISTED IN PARAGRAPH 17 ABOVE PLEASE ATTACH THE FOLLOWING:**18.1 Please attach the following documents if the applicant is a HI:**

- 18.1.1 Documents for the last three (3) years or an otherwise motivated timeframe, which will prove that the entity applying is an established company and not a dormant company or a company that is not in a financially sound position (e.g. Imports by Bill of Entry number, Balance Sheet, Income and Cash Flow statements); and
- 18.1.2 Documentation to prove its BBBEE status in terms of the BBBEE Act and Code.

18.2 Please attach the following documents if the applicant is an HDI:

- 18.2.1 A Curriculum Vitae/profile of the applicant;
- 18.2.2 If a company applies, proof that it is wholly owned by HDIs, including certified copies of share certificates and a BBBEE verification certificate by an accredited rating agency to confirm its BBBEE status;
- 18.2.3 If a company in partnership with an HDI applies, proof that the HDI is the majority shareholder of this company, including certified copies of share certificates and share registers and a BBBEE verification certificate by an accredited rating agency, or similar document, to confirm its BBBEE status;
- 18.2.4 Letters of intent from the buyers of imported meat; and
- 18.2.5 Indication of ability and capacity to import a minimum of 135 tonnes of bone-in cuts in a single consignment.

PLEASE COMPLETE THE RELEVANT AFFIDAVIT WHICH IS AN INSEPARABLE PART OF THE APPLICATION FORM

NON-RELATED PARTY AFFIDAVIT:

AFFIDAVIT IN RESPECT OF AN APPLICATION FOR A DAFF QUOTA ALLOCATION IMPORT PERMIT IN TERMS OF REBATE ITEM 460.03/0207.14.9/01.07 OF SCHEDULE 4 TO THE CUSTOMS AND EXCISE ACT, 1964

NB: The obligation to complete and submit this affidavit cannot be transferred to an external authorised representative, auditor or any other third party acting on behalf of the applicant.

I, the undersigned _____
(Full names) with identity number _____ in my capacity as _____ of _____
(herein after referred to as the applicant) do hereby make oath / affirmation and declare that:

1. I am duly authorised to depose to this affidavit;
2. The particulars contained in the application form are true and correct to the best of my knowledge and belief;
3. I have satisfied myself that the preparation of the application has been done in conformity with the regulations in respect of the above-mentioned rebate provision, with which I have fully acquainted myself and to which I unconditionally agree;
4. I accept that the decision by the Department of Agriculture, Forestry and Fisheries will be final and conclusive and that the said Department may at any time conduct or order that an investigation to verify information furnished in the application form be conducted; and
5. The applicant or any one of its associates, or related party is not a subject of an investigation by any organ of State or other regulatory authority.

SIGNED at _____ on this _____ day of _____ 201__

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at _____ on this the _____ day of _____ 201__.

the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

FULL NAMES:
BUSINESS ADDRESS:
DESIGNATION:
CAPACITY:

RELATED PARTY AFFIDAVIT (each related party to provide a separate affidavit):**AFFIDAVIT IN RESPECT OF AN APPLICATION FOR A DAFF QUOTA ALLOCATION IMPORT PERMIT IN TERMS OF REBATE ITEM 460.03/0207.14.9/01.07 OF SCHEDULE 4 TO THE CUSTOMS AND EXCISE ACT, 1964**

NB: The obligation to complete and submit this affidavit cannot be transferred to an external authorised representative, auditor or any other third party acting on behalf of the applicant.

I, the undersigned _____
 (Full names) with identity number _____;
 _____;
 _____ in my capacity as _____
 of _____ (herein after referred to as the applicant) do
 hereby make oath / affirmation and declare that:

1. I am duly authorised to depose to this affidavit;
2. I am related to: _____
3. The particulars contained in the application form are true and correct to the best of my knowledge and belief;
4. I have satisfied myself that the preparation of the application has been done in conformity with the regulations in respect of the above-mentioned rebate provision, with which I have fully acquainted myself and to which I unconditionally agree;
5. I accept that the decision by the Department of Agriculture, Forestry and Fisheries will be final and conclusive and that the said Department may at any time conduct or order that an investigation to verify information furnished in the application form be conducted; and
6. The applicant or any one of its associates, or related party is not a subject of an investigation by any organ of State or other regulatory authority.

SIGNED at _____ on this _____ day of
 _____ 201__

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and sworn before me at _____ on this the _____ day of _____ 201__,

the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

FULL NAMES:
 BUSINESS ADDRESS:
 DESIGNATION:
 CAPACITY:

ANNEXURE B



International Trade Administration Commission of South Africa

INFORMATION REQUIRED IN SUPPORT OF AN APPLICATION FOR A REBATE PERMIT IN TERMS OF REBATE ITEM 460.03/0207.14.9/01.07 FOR REBATE OF THE FULL ANTI-DUMPING DUTY ON BONE-IN CUTS OF THE SPECIES GALLUS DOMESTICUS, FROZEN, CLASSIFIABLE IN TARIFF SUBHEADING 0207.14.9

1. Details of applicant:

1.1 Name of company:.....

1.2 Postal address:.....
.....
.....

1.3 Telephone no.:.....

1.4 E-mail address:.....

1.5 Name of contact person:.....

1.6 Physical address:.....
.....

2. Details of products in respect of which a Rebate Permit is required:

2.1 Full description of products to be imported:
.....
.....
.....

2.2 Quantity in kg:.....

2.3 F.o.b. Value in R:

2.4 Country of origin:

2.5 Planned date of import or period during which it is planned to import:
.....

2.6 Port of entry:.....

PLEASE COMPLETE THE RELEVANT AFFIDAVIT WHICH IS AN INSEPARABLE PART OF THE APPLICATION FORM

NON-RELATED PARTY AFFIDAVIT:

AFFIDAVIT IN RESPECT OF AN APPLICATION FOR A REBATE PERMIT IN TERMS OF REBATEITEM 460.03/0207.14.9/01.07 OF SCHEDULE 4 TO THE CUSTOMS AND EXCISE ACT, 1964

NB: The obligation to complete and submit this affidavit cannot be transferred to an external authorised representative, auditor or any other third party acting on behalf of the applicant.

I, the undersigned,..... (Full names) with identity number, in my capacity asof..... (hereinafter referred to as the applicant) do hereby make oath/affirmation and declare that –

- 1) I am duly authorised to dispose to this affidavit;
- 2) The particulars contained in the application form are true and correct to the best of my knowledge and belief;
- 3) I have satisfied myself that the preparation of the application has been done in conformity with the regulations in respect of the above-mentioned rebate provision, with which I have fully acquainted myself and to which I unconditionally agree;
- 4) I accept that the decision by the International Trade Administration Commission will be final and conclusive and that the said Commission may at any time conduct or order that an investigation to verify information furnished in the application form, be conducted; and
- 5) The applicant or any one of its associates, or related party is not a subject of an investigation by any organ of State or other regulatory authority.

SIGNED at _____ on this _____ day of _____ 201__

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at _____ on this the _____ day of _____ 2015, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

FULL NAMES:
BUSINESS ADDRESS:
DESIGNATION:
CAPACITY:

RELATED PARTY AFFIDAVIT (each related party to provide a separate affidavit):**AFFIDAVIT IN RESPECT OF AN APPLICATION FOR A REBATE PERMIT IN TERMS OF REBATE ITEM 460.03/0207.14.9/01.07 OF SCHEDULE 4 TO THE CUSTOMS AND EXCISE ACT, 1964**

NB: The obligation to complete and submit this affidavit cannot be transferred to an external authorised representative, auditor or any other third party acting on behalf of the applicant.

I, the undersigned _____
 (Full names) with identity number _____;
 _____;
 _____ in my capacity as _____
 of _____ (herein after referred to as the applicant) do
 hereby make oath / affirmation and declare that –

- 1) I am duly authorised to dispose to this affidavit;
- 2) I am related to: _____;
- 3) The particulars contained in the application form are true and correct to the best of my knowledge and belief;
- 4) I have satisfied myself that the preparation of the application has been done in conformity with the regulations in respect of the above-mentioned rebate provision, with which I have fully acquainted myself and to which I unconditionally agree;
- 5) I accept that the decision by the International Trade Administration Commission will be final and conclusive and that the said Commission may at any time conduct or order that an investigation to verify information furnished in the application form, be conducted; and
- 6) The applicant or any one of its associates, or related party is not a subject of an investigation by any organ of State or other regulatory authority.

SIGNED at _____ on this _____ day of _____ 201__

 DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at _____ on this the _____ day of _____ 2015,

the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

FULL NAMES:
 BUSINESS ADDRESS:
 DESIGNATION:
 CAPACITY: