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DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2210

1 July 2022

INTERNATIONAL TRADE ADMINISTRATION ACT, 2002 (ACT NO 71 OF 2002)

POLICY DIRECTIVE ISSUED IN TERMS OF SECTION 5 OF THE INTERNATIONAL TRADE ADMINISTRATION ACT, 2002, ON AMENDMENTS TO THE AUTOMOTIVE PRODUCTION AND DEVELOPMENT PROGRAMME PHASE 2 (APDP2)

I, Ebrahim Patel, in my capacity as the Minister of Trade, Industry and Competition, acting under the powers vested in me by Section 5 of the International Trade Administration Act, 2002 (Act No. 71 of 2002) (the Act), hereby issue a trade policy directive in terms of which I direct the International Trade Administration Commission of South Africa (the Commission) to exercise its powers under the Act to assist with amendments to the regulatory framework governing the Automotive Production and Development Programme Phase 2 (APDP2) for the reasons and in light of the developments discussed below.

BACKGROUND

In April 2022, the province of KwaZulu-Natal in particular suffered severe rainstorms ("the flooding"). As a result of the unprecedented and catastrophic flooding that ensued, some infrastructure in the province was either damaged or destroyed. The extensive damage in the province resulted in the declaration of a National State of Disaster. In addition to the damage to infrastructure, some manufacturers situated in the province that participate in the APDP2 suffered significant damage to their manufacturing facilities, such that they have ceased, at least temporarily, the production of automotive products that would entitle such manufacturers to apply for benefits under the APDP2.

DISCUSSION

Final manufacturers are able to accrue benefits under the APDP2, provided they comply with various requirements set out in the APDP2 Regulations and Guidelines (which is referred to as Info Docs). However, where the manufacturing facilities of final manufacturers suffered extensive damage because of the flooding in KwaZulu-Natal, the result may not only be the loss of substantial sales because of the lack, or lower levels, of production, but also the loss of a significant level of APDP2 benefits that may impact on the viability and sustainability of critical investments in South Africa.

Consequently, the damage from the flooding constitutes an exceptional circumstance justifying a limited departure from the normal requirements for the accrual of benefits under the APDP2. I note that in paragraph 2.5 of Info Doc B, the APDP2 already provides for a limited deviation for OEMs in exceptional circumstances that result in, for example, difficulties in achieving set production volumes. However, this provision is narrow in scope, pertaining solely to the calculation of company specific percentages for the purpose of the volume assembly localisation allowance.

Given that the flooding may have severely affected not only OEMs, but also other final manufacturers, the Commission is directed to consider amendments of the regulatory framework of the APDP2 to provide for a limited departure from the normal requirements for the accrual of benefits under the APDP2. Such amendments should also address special facilities such as the advance issuing of production rebate certificates (PRCs), deviation from the specific administrative requirements to claim PRCs, replacement of PRCs (for example for vehicles already produced in SA but damaged due to the flooding and written off prior to the PRCs being issued) and the conditions to be met by a final manufacturer to qualify for any such limited deviation under the APDP2. The purpose of this Directive is to promote local manufacturing by ensuring the commercial viability of final manufacturers under the APDP2 whose ability to manufacture has been severely affected by the flooding in KwaZulu-Natal.

The Commission has been involved in the day-to-day administration of various aspects of the APDP2 since the programme's inception.

As a result, the Commission has developed significant technical expertise that can assist with formulating limited amendments to the APDP2 regulatory framework to provide for a deviation from the normal requirements for the accrual of benefits under the APDP2 under exceptional circumstances.

In light of such expertise, the Commission is hereby directed to assist in the formulation of, as needed, amended regulations and guidelines. However, any amendments that provide for a departure from the normal requirements for accruing benefits under the APDP2, whether in light of the current situation or future circumstances, must be limited in scope in that (i) a deviation from the normal requirements may be considered only in exceptional circumstances when a national state of disaster has been declared, (ii) the exceptional circumstance must have a significant impact on a final manufacturer in terms of lost production volumes and (iii) the Accounting Officer of the Department of Trade, Industry and Competition (**the dtic**) confirms that exceptional circumstances exist that requires a departure from the normal requirements for accruing benefits under the APDP2.

Additionally, any amendments to the regulations and guidelines that provide for the departure from the normal requirements must provide that final manufacturers must submit evidence of the impact of the exceptional circumstances on the ability of an applicant to manufacture and meet the requirements of the APDP2; and ensure that the principle of “no loss no gain” applies such that a manufacturer is not in a better position financially with the deviation than what would have applied without the exceptional circumstances referred to. An amendment that provides for an advance in the provision of benefits that would have accrued under the APDP2 had the exceptional circumstance not occurred must also provide for such advance benefits to be recoverable within a reasonable time.

Finally, in view of the urgency, the Commission is to publish any amendments of the current APDP2 Regulations and Guidelines for public comment through a notice in the *Government Gazette* and on the Commission's official website. Given the extraordinary situation created by the flooding and the impact on affected manufacturers, the Commission should consider shortened timeframes for the