

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**NO. 7231**

**13 March 2026**

**INVITATION FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS TO THE  
AMENDED SAFEGUARD REGULATIONS**

I, Mpho Parks Tau, MP, Minister of Trade, Industry and Competition, in terms of section 59 of the International Trade Administration Act, 2002 (Act No. 71 of 2002), hereby publish for public comment proposed amendments to the Amended Safeguard Regulations

The proposed amendments address substantive and procedural aspects of safeguard investigations. Substantively, the revised regulations strengthen the decision-making framework of the International Trade Administration Commission of South Africa by including provisions on public-interest hearings, clarifying the treatment of developing-country exemptions and providing a more detailed framework for assessing "unforeseen developments". The amendments also reinforce requirements relating to adjustment plans and establish clearer rules for mid-term reviews and the extension of safeguard measures.

Procedurally, the amendments align confidentiality provisions with those in other trade-remedy regulations, and organisational updates, such as the inclusion of section headings, were included to improve usability for stakeholders participating in safeguard investigations.

Interested persons are invited to submit written comments on the proposed amendments, which must be submitted within four (4) weeks of the date of publication of this notice in the Government Gazette.

Written comments must be submitted by e-mail, clearly marked "Comments on Proposed Amendments to the Amended Safeguard Regulations" in the subject line and addressed to:

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The proposed amendments to the Amended Safeguard Regulations are published together with this notice and may also be obtained electronically upon request at the e-mail address provided above.



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**REPUBLIC OF SOUTH AFRICA**

**THE INTERNATIONAL TRADE  
ADMINISTRATION COMMISSION OF  
SOUTH AFRICA**

**AMENDED SAFEGUARD REGULATIONS  
2026**



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## **PART A – PREAMBLE**

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

### **GENERAL 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 and of the effect of the obligations incurred under the World Trade Organisation, 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 shall be applied to imports from all countries even if the imports, which cause serious injury, originate mainly or only from one country;
- (e) A safeguard measure must be progressively liberalised 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 liberalisation 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 has been in place on the same product;
- (i) If SACU introduces a safeguard measure it 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.

**SPECIAL SAFEGUARD MEASURES ON AGRICULTURAL PRODUCTS IN TERMS OF THE WTO AGREEMENT ON AGRICULTURE:**

- (a) A special safeguard measure may only be applied in connection with the importation of an agricultural product, in respect of which measures referred to in paragraph 2 of Article 4 of the Agreement on Agriculture (AoA) have been converted into an ordinary customs duty and which is designated in its Schedule with the symbol "SSG" as being the subject of a concession in respect of which the provisions of this Article may be invoked.
- (b) Special safeguard measures shall normally be applied to imports from all countries;
- (c) A special safeguard measure imposed in terms of Article 5 of AoA can only be in place until the end of the year in which it has been imposed, and may only be levied at a level which shall not exceed one third of the level of the ordinary customs duty in effect in the year in which the action is taken;
- (d) The investigation of the merits of a special safeguard measure and the implementation thereof are subject to prescribed notifications and consultations between SACU, its trading partners and the World Trade Organisation.

**PART B – GENERAL PROVISIONS****1. Application of regulations**

- 1.1. Safeguard investigations are conducted in terms of sections 16 and 26 of the Main Act.
- 1.2. A definitive general safeguard measure may be applied only where:
  - (a) the Commission finds that the product under investigation is being imported into the Republic or 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, to the extent necessary, are required to prevent or remedy serious injury and 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 A definitive special safeguard measure in terms of Article 5 of the WTO Agreement on Agriculture may be applied only where:
- (a) the Commission finds that the volume of imports of that product entering the Common Customs Area of SACU during any year exceeds a trigger level which relates to the following schedule of existing market access opportunities defined as imports as a percentage of the corresponding domestic consumption figure compiled by the Department of Agriculture, Land Reform and Rural Development or any other relevant government institution during the three preceding years for which data are available:
    - (i) where such market access opportunities for a product are less than or equal to 10 per cent, the base trigger level shall equal 125 per cent;
    - (ii) where such market access opportunities for a product are greater than 10 per cent but less than or equal to 30 per cent, the base trigger level shall equal 110 per cent;
    - (iii) where such market access opportunities for a product are greater than 30 per cent, the base trigger level shall equal 105 per cent; or, but not concurrently:
  - (b) the price at which imports of that product may enter the SACU area, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency,

falls below a trigger price equal to the average 1986 to 1988 reference price<sup>1</sup> for the product concerned.

- 1.4 Imports under current and minimum access commitments established as part of a concession shall be counted for the purpose of determining the volume of imports required for invoking the provisions of Article 5 of the AOA, but imports under such commitment shall not be affected by any additional duty imposed under Article 5 of the AoA.
- 1.5 Any supplies of the product in question which were *en route* on the basis of a contract settled before the additional duty is imposed under Article 5 of the AoA shall be exempted from any such additional duty, provided that they may be counted in the volume of imports of the product in question during the following year for the purposes of triggering the provisions of Article 5 of the AoA in that year.
- 1.6 The Commission, in considering the recommendation of a definitive general safeguard measure, may take into consideration the requirement of compensation to countries whose exports will be substantially affected by any safeguard measure.
- 1.7 Nothing in these regulations prevents the industry producing products for which the Republic has reserved its right to apply a special safeguard measure contemplated in Article 5 of the AoA, to apply to the Commission for general safeguard action in terms of the WTO Agreement on Safeguards.
- 1.8 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.
- 1.9 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

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1. The reference price used to invoke the provisions of this subparagraph shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing. It shall, following its initial use, be publicly specified and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

taken in line with the terms and conditions stated in the Protocol of Accession.

- 1.10 All the provisions of these regulations, with the exception of sections 8; 9; 10; 11.3(d)–(g); 12; 13.1; 14.2(d)–(g); 14.4; 15; 16; 17; 18; 19; 21; 23; and 24, shall apply *mutatis mutandis* 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);

“**deadlines**” shall be interpreted as the final date for submissions, responses, comments and requests and the like as envisaged by the different sections of these Regulations, and shall be deemed to be at 15h00 South African standard time on the deadline indicated, unless expressly otherwise indicated;

“**directly competitive product**” means a product, other than a like product, that although not necessarily similar to the product under investigation in terms of its characteristics, is essentially equivalent in terms of being put to the same use and therefore is interchangeable in commercial terms with the product under investigation;

“**facts available**” means the information that is available to the Commission at the time of making a determination, whether preliminary or final provided that all requirements regarding non-confidentiality and timely submission have been met;

“**good cause**” relates to an occurrence outside the control of the participating interested party or the Commission and does not include merely citing insufficient time to submit information to the Commission;

“**investigation period for injury**” is the period for which it is assessed whether the SACU industry experienced serious injury. The investigation period for injury shall be clearly indicated in the initiation notice published

in the *Government Gazette*. Information relating to a period subsequent to the investigation period shall not normally be taken into consideration;

**“like product”** means:

- (a) a product which is identical, i.e. alike in all respects to the product under investigation; or
- (b) in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of that product under investigation.

**“Main Act”** refers to the International Trade Administration Act, 2002 (Act No. 71 of 2002);

**“participating interested parties”** shall mean those parties that have indicated their interest in participating in an investigation;

**“Related parties”** are parties deemed to be related for purposes of a safeguard investigation if:

- (a) one directly or indirectly owns, controls or holds five per cent or more of the equity shares of the other;
- (b) one has the power to directly or indirectly nominate or appoint a director to the board of the other;
- (c) one is an officer or director of the other's business;
- (d) they are legally recognised partners in business;
- (e) one is employed by the other;
- (f) they are both directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person;
- (h) they appear to be related by virtue of their conduct;
- (i) they are blood relatives or are related by marriage, common-law partnership or adoption; or
- (j) if their relationship is otherwise of such a nature that trade between them cannot be regarded to be at arm's length.

**“SACU”** means the Southern African Customs Union;

**“SACU industry”** means the domestic producers in the SACU as a whole of the like or directly competitive products or those of them whose collective output of the like or directly competitive products constitutes a major proportion of the total SACU production of those products.

Where a SACU producer is –

- (a) related to the importer, exporter or the foreign producer; or
  - (b) itself an importer of the products under investigation,
- the term "SACU industry" may be interpreted as referring to the rest of the SACU producers.

### **3 Confidentiality**

- 3.1 A person may, when submitting correspondence to the Commission identify information therein that the person claims is –
- (a) by nature confidential; or
  - (b) the person wishes otherwise to be recognised as confidential.
- 3.2 Interested parties providing confidential information in any correspondence shall be required to furnish non-confidential summaries thereof. These summaries shall –
- (a) indicate in each instance where confidential information has been omitted;
  - (b) indicate in each instance the reasons for confidentiality; and
  - (c) be in sufficient detail to permit other interested parties a reasonable understanding of the substance of the information submitted in confidence.
- 3.3 Non-confidential information supplied by interested parties, as set out in subsection 2, and all non-confidential correspondence between the Commission and participating interested parties during the investigation shall be kept in a public file.
- 3.4 Where information does not permit non-confidential summarisation, a sworn statement shall be provided explaining why the confidential information cannot be summarised. Merely reciting that the confidential information is of a kind listed in subsection 5 is not sufficient in this regard.
- 3.5 The following list provides examples of information that is by nature confidential as contemplated in sections 1(2) and 33(1)(a) of the Main Act, read with section 36 of the *Promotion of Access to Information Act, 2000* (Act 2 of 2000):
- (a) management accounts;
  - (b) financial accounts of a private company;

- (c) actual and individual sales prices;
- (d) actual costs, including cost of production and importation cost;
- (e) actual sales volumes;
- (f) individual sales prices;
- (g) information, the release of which could have serious consequences for the person that provided such information; and
- (h) information that would be of significant competitive advantage to a competitor;

provided that the party submitting such information indicates it to be confidential.

- 3.6 All correspondence not clearly indicated to be confidential shall be treated as non-confidential.
- 3.7 If a person makes a claim in terms of subsection 1, the Commission shall determine whether the information is confidential as provided for in section 34 of the Main Act.
- 3.8 Notwithstanding subsection 5, the Commission may disregard any information indicated to be confidential that –
- (a) it does not determine to be confidential in terms of subsection 7; or
  - (b) is not accompanied by –
    - (i) a proper non-confidential summary in terms of subsection 2; or
    - (ii) a sworn statement as contemplated in subsection 4; and
- the deficiency has not been addressed in accordance with the instructions of the Commission.
- 3.9 In determining whether to disregard information indicated to be confidential where the requirement in subsection 8(b)(i) has not been met, the Commission exercises its discretion considering, amongst others, whether the deficiency is of such a nature as to materially affect the ability of other interested parties to defend their interests.

#### **4 Investigations**

- 4.1 Except as provided for in subsection 2, a general safeguard investigation shall only be initiated upon acceptance of a written application by or on behalf of the SACU industry, that contains sufficient evidence to

establish a *prima facie* case that, as a result of unforeseen developments and of the effect of the obligations incurred under the World Trade Organisation, the product under investigation is being imported into the Republic or 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.

- 4.2 The Commission may initiate a general safeguard investigation without having received a written application from the SACU industry. In such cases the Commission shall proceed only if it has sufficient evidence to establish a *prima facie* case that, as a result of unforeseen developments and of the effect of the obligations incurred under the World Trade Organisation, the product under investigation is being imported into the Republic or 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. A non-confidential version of the information the Commission relies on shall be made available to all participating interested parties.
- 4.3 A special safeguard investigation shall only be initiated upon acceptance of a written application by or on behalf of the SACU industry, that contains sufficient evidence to establish a *prima facie* case that the volume of imports of the product under investigation exceeds a trigger level which relates to existing market access opportunity as set out in Article 5 of the AoA; or, but not concurrently, the price at which imports of that product may enter the SACU area, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price<sup>2</sup> for the product concerned.

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2. The reference price used to invoke the provisions of this subparagraph shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing. It shall, following its initial use, be publicly specified and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

- 4.4 In determining whether increased imports have occurred “as a result of unforeseen developments,” the Commission shall identify the developments that were not reasonably foreseeable at the time SACU incurred the relevant WTO obligations.
- 4.5 Unforeseen developments may include, but are not limited to:
- (a) global excess capacity and market distortions in third countries;
  - (b) technological developments altering the cost structures of exporting producers;
  - (c) sudden changes in demand patterns in major third-country markets causing trade diversion; and
  - (d) supply chain disruptions arising from geopolitical or macroeconomic shocks.

The Commission may exercise its discretion in determining the relevance and weight to be accorded to each unforeseen development.

- 4.6 The Commission may conduct an expedited investigation to determine whether a safeguard measure is being circumvented, including through product modification and transshipment, and may recommend appropriate adjustments to ensure its effectiveness.

## **5 Oral hearings**

- 5.1 Any participating interested party may request an oral hearing during the investigation, provided the party indicates reasons for not relying on written submissions only. The Commission may refuse an oral hearing if granting such hearing will unduly delay the finalisation of a preliminary or final determination. No request for an oral hearing will be considered more than 60 days after the initiation of the investigation.

## **6 Consultations**

- 6.1 The Commission shall provide for consultations with the representatives of countries that have a substantial interest in a general safeguard investigation within 14 days after the imposition of a provisional payment.
- 6.2 Consultations entered into in terms of subsection 1 shall normally be concluded within 30 days after the publication of the Commission's preliminary report.

- 6.3 The Commission shall provide representatives of countries that have a substantial interest in a general safeguard investigation 30 days for consultations prior to the application or extension of a definitive safeguard measure with a view to, *inter alia*,
- (a) reviewing the information relating to
    - (i) evidence of serious injury or threat thereof caused by increased imports;
    - (ii) the precise description of the product involved;
    - (iii) the proposed measure;
    - (iv) the proposed date of introduction;
    - (v) the expected duration of the measure; and
    - (vi) the timetable for progressive liberalization;
  - (b) exchanging views on the measure; and
  - (c) discussing ways to maintain a substantially equivalent level of concessions and other obligations vis-à-vis that country.
- 6.4 In cases where it is proposed that a general safeguard measure be extended, the Commission shall, in addition to the factors contemplated under subsection 3, also provide evidence that the relevant SACU industry is adjusting.
- 6.5 The Commission shall provide representatives of any interested country the opportunity to consult with it in respect of the conditions of application of a special safeguard measure.

## **PART C – PROCEDURES**

### **Sub-Part I – General**

#### **7 SACU industry**

- 7.1 Other than investigations initiated in terms of section 4.2, any application for any safeguard action shall be brought by or on behalf of the SACU industry.
- 7.2 An application shall be regarded as brought by or on behalf of the SACU industry if –

- (a) at least 25 per cent of the SACU producers by domestic production volume support the application; and
  - (b) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application.
- 7.3 In the case of industries involving an exceptionally large number of producers, the Commission may determine support and opposition by reference to the largest number of producers that can reasonably be included in the investigation or by using statistically valid sampling techniques based on the information available to the Commission at the time of its finding.
- 7.4 If a SACU producer withdraws the application or its support thereof after the investigation has been initiated, the Commission may –
- (a) terminate the investigation; or
  - (b) disregard the withdrawal of support and continue with its investigation as if all requirements in subsections 1, 2 and 3 have been met.

## **8 Serious injury**

- 8.1 Serious injury shall be understood to mean a significant overall impairment in the position of the SACU industry.
- 8.2 In evaluating serious injury the Commission shall consider injury information pertaining to a major portion of the SACU industry.
- 8.3 In determining serious injury or a threat thereof to the SACU industry the Commission shall consider:
- (a) the rate and volume of the increase in imports of the product concerned
    - (i) in absolute terms; or
    - (ii) relative to the production in SACU; and
  - (b) whether there have been significant changes in the performance of the SACU industry in respect of the following potential injury factors:
    - (i) sales volume;
    - (ii) profit and loss;

- (iii) output;
- (iv) market share;
- (v) productivity;
- (vi) capacity utilisation;
- (vii) employment; and
- (viii) any other relevant factors placed before the Commission.

8.4 The Commission may require any additional information on injury from any participating interested party at any stage during an investigation.

8.5 Each of the factors mentioned in subsection 3 shall be considered for the like or directly competitive products only or, where such analysis is not possible, for the narrowest group of products for which such analysis can be made.

## **9 Threat of serious injury**

9.1 A determination of threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances that would create a situation in which serious injury would be caused must be clearly imminent.

9.2 In making a determination of threat of serious injury, the Commission shall evaluate whether a significant rate of increase in imports, pricing trends, or capacity expansion of exporters clearly indicate that serious injury is imminent. The Commission shall consider the totality of the evidence before it and the weight to put on any one factor in making a determination.

## **10 Causality**

10.1 The Commission shall determine whether increased imports, as a result of unforeseen developments and of the effect of SACU's WTO obligations, are causing or threatening to cause serious injury to the SACU industry.

10.2 In considering whether there is a causal link between the imports of the product concerned and the serious injury, the Commission shall consider all relevant factors including factors other than the imports of the product concerned that may have contributed to the SACU industry's injury,

provided that a participating interested party has submitted, or the Commission otherwise has, information on such factor or factors.

- 10.3 In evaluating causation the Commission shall take into account:
- (a) the magnitude and timing of the increase in imports;
  - (b) the degree of price undercutting, price suppression or price depression; and
  - (c) the impact of increased imports on the injury factors listed in section 8.
- 10.4 The injury caused by other factors shall not be attributed to the increased imports.

## **11 Verification**

- 11.1 The Commission may conduct on-site or remote verifications of information submitted by interested parties.
- 11.2 Where verification is refused or obstructed, such as where access to records necessary for verification is not provided or is not timeously provided, the Commission may disregard the information submitted and resort to facts available.
- 11.3 Verification findings shall be included in the non-confidential record, subject to confidentiality rules.

## **Sub-Part II – Pre-Initiation and Initiation Procedures**

### **12 Properly documented application**

- 12.1 Written complaints shall be made by or on behalf of the SACU industry in the required format.
- 12.2 In determining whether a complaint submitted in terms of subsection 1 constitutes a properly documented application, the Commission shall determine whether –
- (a) the application includes such information as is reasonably available to the applicant on the issues contemplated in subsection 3; and
  - (b) a proper non-confidential version has been submitted.
- 12.3 The application shall contain the following information:

- (a) complete description of the imported product;
- (b) complete description of the SACU like or directly competitive product;
- (c) industry standing;
- (d) a summary of the factors on which the allegation of serious injury or threat thereof is based;
- (e) the unforeseen developments that led to the increased imports;
- (f) relief sought;
- (g) efforts taken or planned to compete with the imports;
- (h) any other information required by the Commission.

12.4 The Commission will return all applications that do not contain sufficient information, as required under subsection 3, to the applicant, unless such deficiencies are properly addressed within 7 days after the issue of a deficiency letter. This shall in no way prejudice the right of the SACU industry to submit a new application.

### **13 Serious injury standard for initiation purposes**

In determining serious injury to a SACU industry, the Commission shall consider whether the information submitted in this regard and relating to the factors listed in section 8 establishes a *prima facie* case of serious injury or threat thereof.

### **14 Merit Assessment**

14.1 In its merit assessment for general safeguards the Commission shall determine whether there is sufficient information to establish a *prima facie* case that, as a result of unforeseen developments and of the effect of the obligations incurred under the WTO Agreement, the product under investigation is being imported into 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.

14.2 In its merit assessment for special safeguards the Commission shall determine whether there is sufficient information to establish a *prima facie* case that the volume of imports entering the SACU area exceeding the trigger level which relates to existing market access opportunity; or

the price at which imports may enter the SACU area, as determined on the basis of the c.i.f. import price falls below the trigger price for the product concerned.

- 14.3 In the event that the Commission decides not to initiate an investigation it shall inform the applicant concerned accordingly and supply it with a full set of reasons for its decision.

## **15 Initiation and notification**

- 15.1 An investigation shall be formally initiated through publication of an initiation notice in the *Government Gazette*.
- 15.2 The initiation notice shall contain at least the following information:
- (a) the identity of the applicant;
  - (b) a detailed description of the product under investigation, including the tariff subheading applicable to the product;
  - (c) a detailed description of the like or directly competitive SACU product;
  - (d) a summary of the factors on which the allegation of serious injury or threat thereof is based;
  - (e) the unforeseen developments that led to the increased imports;
  - (f) the address to which representations by interested parties should be directed; and
  - (g) the time frame for responses by participating interested parties.
- 15.3 If the Commission, during its investigation, finds that the subject product is imported under a tariff subheading not initially indicated to be in the scope of the investigation, it may include the imports of such subject product in its investigation.
- 15.4 The Commission may, at any stage of the investigation, clarify the scope of the product under investigation where necessary to ensure accurate analysis, provided that any such clarification shall be published and interested parties shall be afforded an opportunity to comment thereon.
- 15.5 Within 7 days after initiation the Commission shall –
- (a) notify the representative of each country of origin and of export that may be significantly affected by a safeguard measure of the initiation of the investigation; and

- (b) supply each country contemplated in paragraph (a) with a copy of the non-confidential version of the application.

### **Sub-Part III - Preliminary Investigation Phase**

#### **16 Responses by interested parties**

- 16.1 All interested parties will receive 20 days from the initiation of an investigation to comment on the application.
- 16.2 The Commission may grant an extension for the submission of comments on good cause shown.
- 16.3 The Commission may prescribe the format in which submissions should be made.
- 16.4 All submissions shall be made in both hard copy and in electronic format unless the Commission has agreed otherwise in writing. Failure to comply with this provision may result in the submission being regarded as deficient.
- 16.5 The Commission may request any additional information from any participating interested party at any stage of the investigation, and may prescribe a reasonable deadline for the submission of such information.

#### **17 Non-cooperation**

- 17.1 Where any interested party provides a deficient submission, does not provide necessary information within the prescribed time limits, significantly impedes the investigation, or provides information that cannot be verified, the Commission may make determinations on the basis of facts available.
- 17.2 Facts available may include but are not limited to:
  - (a) information supplied by cooperating parties;
  - (b) publicly available data;
  - (c) official statistics;
  - (d) data from customs or other government agencies; and
  - (e) estimations derived from verified data.
- 17.3 Where a party has not acted to the best of its ability, the Commission may draw adverse inferences.

**18 Provisional measures**

- 18.1 The Commission may request the Commissioner for the South African Revenue Service, in terms of section 57A of the Customs and Excise Act, 91 of 1964, to impose a provisional payment as soon as the Commission has made a preliminary determination that –
- (a) there are critical circumstances where a delay would cause damage that would be difficult to repair; and
  - (b) there is clear evidence that increased imports have caused or are threatening to cause serious injury.
- 18.2 Provisional payments may be imposed for a maximum period of 200 days.
- 18.3 The period for which provisional measures are in force shall be regarded as part of the total duration for which safeguard measures are in force.
- 18.4 The Commission will provide an opportunity for consultations with participating interested parties following the imposition of provisional measures.

**19 Preliminary report**

- 19.1 In the event that the Commission requests the imposition of a provisional safeguard measure, as contemplated in section 18, the Commission shall make available a public report within seven days of the publication of its preliminary finding.
- 19.2 The preliminary report shall contain at least the following information:
- (a) identity of the applicant;
  - (b) a full description of the product under investigation, as well as the directly competitive products, including the tariff classifications;
  - (c) date of the Commission's decision to initiate the investigation;
  - (d) initiation date and notice number;
  - (e) date of the Commission's preliminary determination;
  - (f) an evaluation of the injury factors considered;
  - (g) an evaluation of the causality factors considered;
  - (h) the unforeseen developments that led to the increased imports;
  - (i) the Commission's finding, including the preliminary safeguard measure requested; and

- (j) while preserving the requirements of confidentiality, all relevant issues of fact and law considered by the Commission in reaching its preliminary determination.
- 19.3 The Commission shall forward the preliminary report direct to all participating interested parties unless the number of participating interested parties makes this impracticable.

#### **Sub-Part IV - Final Investigation Phase**

##### **20 Comments on preliminary report**

- 20.1 All participating interested parties shall receive 14 days, from the date a preliminary report is made available, to comment in writing.
- 20.2 The Commission may grant participating interested parties an extension on good cause shown.

##### **21 Public interest hearing**

- 21.1 The Commission shall provide notice of a public interest hearing.
- 21.2 The purpose of the hearing is for parties to provide the Commission with information about whether the imposition of a definitive safeguard measure would be in the public interest.
- 21.3 Parties wishing to make an oral presentation to the Commission on whether the imposition of a definitive safeguard measure would be in the public interest shall provide the Commission with a detailed version, including where applicable a non-confidential version which conforms to the requirements of section 3, of the information to be presented at the hearing.
- 21.4 The written submission contemplated in subsection 3 shall be submitted to the Commission no later than the deadline set forth in the notice contemplated in subsection 1. The Commission may not allow a party to

make an oral presentation if the written submission is not timeously received.

- 21.5 The non-confidential version of the information submitted in terms of subsection 3 and the non-confidential version of any confidential information submitted during an oral presentation will be placed on the public file.
- 21.6 The Commission may limit the duration of an oral presentation. Any such limitation will be communicated to the party requesting to make a presentation prior to the hearing.
- 21.7 Notwithstanding subsection 6, on the day of the hearing, the Commission may structure the proceedings as it deems appropriate.

## **22 Public interest determinations**

In determining whether a safeguard measure is in the public interest, the Commission shall consider, inter alia:

- (a) the need to restore effective competition in the SACU market;
- (b) the trade-distorting effects of the surge in imports;
- (c) the impact on downstream industries and consumers;
- (d) the adjustment prospects of the SACU industry;
- (e) the overall balance of economic interests.

The Commission may exercise its discretion in determining the relevance and weight to be accorded to each of these factors, but the need to take note of the trade distorting effect of the surge in imports and the need to restore effective competition shall be given special consideration.

## **23 Final determination**

- 23.1 In its final determination the Commission shall consider whether –
- (a) the SACU industry is experiencing serious injury or threat of serious injury, as contemplated in sections 8 and 9;
  - (b) there were increased imports;
  - (c) any increase in imports can be attributed to unforeseen developments;
  - (d) the increased imports resulted in serious injury or threat thereof to the SACU industry;

- (e) injury caused by factors other than the increased imports has been distinguished and not attributed to the increased imports; and
  - (f) the imposition of a safeguard measure would be in the public interest.
- 23.2 The Commission shall issue a public report indicating the reasons for its final determination within seven days of the publication of the final determination.
- 23.3 The public report referred to in subsection 3 shall reflect –
- (a) all issues contemplated under section 8.3;
  - (b) unforeseen developments;
  - (c) public interest; and
  - (d) the basis of its recommendation for –
    - (i) a definitive safeguard measure; or
    - (ii) terminating the investigation.
- 24 Definitive safeguard measures**
- 24.1 A safeguard measure shall be applied only –
- (a) to the extent necessary to prevent or remedy serious injury or threat thereof; and
  - (b) to facilitate adjustment of the SACU industry.
- 24.2 The SACU industry shall be required to submit a plan indicating how it will adjust to increase its competitiveness. Such adjustment plan should reach the Commission no later than 60 days after initiation of the investigation in the *Government Gazette*.
- 24.3 The adjustment plan should include the following:
- (a) measurable benchmarks for productivity, cost reduction, technology adoption and competitiveness improvements;
  - (b) a timeline for implementation;
  - (c) investment commitments;
  - (d) restructuring actions already undertaken or to be taken;
  - (e) any government support measures, where applicable; and
  - (f) any other relevant information.

The adjustment plan should be supported by objectively verifiable information sufficient to substantiate the measures, commitments and benchmarks set out in subparagraphs (a) through (f).

- 24.4 The Commission may grant an extension for the submission of an adjustment plan on good cause shown.
- 24.5 If the Commission proposes applying or extending a safeguard measure it shall provide the representatives of countries having a substantial interest as exporters of the product under investigation 30 days for consultations with a view to, *inter alia*
- (a) reviewing the information relating to the existence of serious injury, or the threat thereof, caused by increased imports, the precise description of the product involved, the proposed measure, the proposed date of introduction, the expected duration of the measure and the timetable for progressive liberalisation;
  - (b) exchanging views on the measure; and
  - (c) reaching an understanding on ways to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between SACU and the exporting countries which would be affected by such a measure.
- 24.6 The Commission may recommend a definitive safeguard measure in the form of
- (a) a customs duty;
  - (b) a quantitative restriction; or
  - (c) a combination of the measures contemplated under paragraphs (a) and (b).
- 24.7 A definitive measure may remain in place for a period not exceeding four years, unless extended in terms of subsection 8.
- 24.8 A definitive measure may be extended by a period of up to six years where the Commission finds that –
- (a) the lapse of the safeguard measure imposed in terms of subsection 7 is likely to lead to the recurrence of serious injury; and

(b) there is evidence that the SACU industry is adjusting, which the Commission may evaluate by determining progress against benchmarks contained in the adjustment plan.

24.9 A request for the extension of a definitive measure by means of a properly documented application shall ordinarily be submitted to the Commission no later than 12 months prior to the date on which the measure will lapse. The Commission may accept an application submitted after that date, provided that the Commission is satisfied that sufficient time remains to conduct the review in accordance with these Regulations.

24.10 Where a definitive safeguard measure is imposed for a period exceeding one year the Commission shall recommend how the measure should be liberalised at regular intervals over the period that the measure is applied.

24.11 Where the application of a safeguard measure is extended in terms of subsection 8 the safeguard shall continue to be further liberalised over the period of its application.

24.12 Where a definitive safeguard measure is imposed for a period exceeding one year, the Commission may, and where it is imposed for a period exceeding three years, the Commission shall, self-initiate a review of the measure at the halfway mark of the application of the safeguard measure to determine whether –

- (a) the continued application of the safeguard measure is required;
  - (b) the safeguard measure can be liberalised at an increased pace;
- and
- (c) the SACU industry is implementing its adjustment programme.

24.13 The Commission shall publish a notice of the initiation of the mid-term review in the Government Gazette to allow participating interested parties to participate in the review and to comment thereon.

24.14 Where, following a mid-term review, the Commission determines that the continued application of the safeguard measure is no longer justified, or that the measure can be further liberalised without causing serious injury, the Commission shall recommend to the Minister that the measure be further liberalised or terminated.

- 24.15 If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.
- 24.16 In cases in which a quota is allocated among supplying countries, the Commission may seek agreement with respect to the allocation of shares in the quota with all such countries having a substantial interest in supplying the product concerned.
- 24.17 In cases in which the method contemplated in subsection 16 is not reasonably practicable, the Commission shall allot to exporting countries having a substantial interest in supplying the product shares based upon the proportions, supplied by such exporting countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.
- 24.18 The Commission may depart from the provisions of subsection 17 provided that
- (a) the Commission finds the presence of serious injury and not only a threat of serious injury;
  - (b) consultations are conducted with such exporting countries;
  - (c) clear demonstration is provided to the Commission that imports from certain countries have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period;
  - (d) the reasons for the departure from the provisions in subsection 17 are justified; and
  - (e) (i) the conditions of such departure are equitable to all suppliers of the product concerned; or  
(ii) the suppliers failed to cooperate in the investigation.
- 24.19 A safeguard measure may not be applied again to the import of a product that has been subject to a safeguard measure unless a period of time equal to half that during which such a measure had been previously applied, has lapsed, provided that the period of non-application is at least two years.

24.20 Notwithstanding the provisions of subsection 19, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

- (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and
- (b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

24.21 Safeguard measures shall not be applied against a product originating in a developing country as long as its share of imports of the product concerned in SACU does not exceed three per cent, provided that developing countries with less than three per cent import share collectively account for not more than nine per cent of total imports of the product concerned.

24.22 Other than as contemplated in subsection 21, a safeguard measure shall be applied to all imports of the subject product irrespective of its source.

24.23 A developing country or countries exempted from the application of a safeguard measure in terms of subsection 21 may become subject to such safeguard measure for the remainder of its application without a new investigation being conducted if its share or their collective share of the imports increases to a level that exceeds three per cent or nine per cent, respectively, of the total import volume in the original investigation period.

24.24 The Commission may, during an extension review, a mid-term review or a developing country exemption review, carry out the assessment contemplated in subsection 23.

24.25 The purpose of a developing country exemption review is to make the assessment contemplated in subsection 23.

24.26 The Commission may determine, in its discretion, a reasonable period for examination of import volumes of the exempted developing country or countries. The period selected for assessment may consist of –

- (a) annual import data;
- (b) data covering part of a year;
- (c) an average of multiple recent periods; or

- (d) such other period that the Commission considers appropriate.
- 24.27 Before making a recommendation in terms of subsection 24, the Commission shall –
- (a) notify the developing country or countries concerned and all participating interested parties of the proposed inclusion; and
  - (b) provide them an opportunity to submit written comments.
- 24.28 The inclusion of a developing country's or countries' imports under a safeguard measure in terms of this section shall not constitute the imposition of a new safeguard measure, nor an increase in the restrictiveness of the existing safeguard measure, but rather the adjustment of the measure in conformity with Article 9 of the WTO Agreement on Safeguards.

### **Sub-Part V – Special Safeguard**

#### **25 Special safeguard duty**

The additional duty imposed after a special safeguard investigation initiated under Article 5 of the AoA shall be set according to the following schedule:

- (a) if the difference between the c.i.f. import price of the shipment expressed in terms of the domestic currency (hereinafter referred to as the "import price") and the trigger price as defined under that subparagraph is less than or equal to 10 per cent of the trigger price, no additional duty shall be imposed;
- (b) if the difference between the import price and the trigger price (hereinafter referred to as the "difference") is greater than 10 per cent but less than or equal to 40 per cent of the trigger price, the additional duty shall equal 30 per cent of the amount by which the difference exceeds 10 per cent;
- (c) if the difference is greater than 40 per cent but less than or equal to 60 per cent of the trigger price, the additional duty shall equal 50 per cent of the amount by which the difference exceeds 40 per cent, plus the additional duty allowed under (b);

- (d) if the difference is greater than 60 per cent but less than or equal to 75 per cent, the additional duty shall equal 70 per cent of the amount by which the difference exceeds 60 per cent of the trigger price, plus the additional duties allowed under (b) and (c);
- (e) if the difference is greater than 75 per cent of the trigger price, the additional duty shall equal 90 per cent of the amount by which the difference exceeds 75 per cent, plus the additional duties allowed under (b), (c) and (d).

#### **Part D – Final Provisions**

##### **26 Transitional application**

These regulations shall apply to all investigations initiated after the promulgation of the regulations.