DEPARTMENT OF TRADE AND INDUSTRY

NOTICE 271 OF 2020

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

REQUEST FOR COMMENTS FROM INTERESTED PARTIES ON GUIDELINES AND CONDITIONS RELATING TO THE EXTENSION OF SAFEGUARD MEASURES

The International Trade Administration Commission of South Africa (the Commission) requests interested parties to make submissions and/or comments on the below guidelines and conditions relating to the extension of safeguard measures.

1. Purpose

1.1 The purpose of this document is to provide a reference and procedural guide pertaining to the application for an extension of safeguard measures in terms of Amended Safeguard Regulation 21.7.

2. Scope

2.1 The scope of this document covers the application process by applicants for an extension safeguard measures in terms of Amended Safeguard Regulation 21.7 which provides that:
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 6 is likely to lead to the recurrence of serious injury ; and

(b) there is evidence that the SACU industry is adjusting.

2.2 The extension of a safeguard measure is envisaged in the regulations as follows:
Regulation 21.4, "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 liberalisation;

(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.

3. Requirements

3.1 The SACU industry must bring an application to ITAC containing information on the subject product relating to likelihood of recurrence of serious injury and or threat thereof caused by increased imports and evidence that the SACU industry is adjusting.

3.2 An application shall be made to ITAC in writing, by or on behalf of the SACU industry. An application shall be submitted in both hard copy and electronic formats (confidential and non-confidential).

3.3 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 of the like product by domestic production volume support the application; and

(b) of those SACU producers of the like product that express an opinion on the application, at least 50 per cent by domestic production volume support such application.

3.4 In the case of fragmented 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 be reasonably included in the investigation.

3.5 The rules relating to confidential information as contained in the ITA Act will apply to all correspondence, which unless clearly indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and be made available to other interested parties.

3.6 A public file will be available for inspection at the Commission's offices by all interested parties, by appointment, and interested parties are encouraged to inspect the public file regularly.

3.7 On receipt of an application, the Trade Remedies unit shall liaise with the SACU industry to ensure that all required information has been submitted in the required format.

Properly documented application

3.8 In determining whether an application constitutes a properly documented application and is therefore complete, the Commission shall determine whether the application includes such information as is reasonably available to the applicant relating to the required information.

3.9 The Commission will identify deficiencies in an application that is not properly documented and return the application to the applicant.

3.10 The application must contain injury information for the period of time when the safeguard measure was in place and an estimate should the safeguard measure lapse.

3.11 The application must contain information on how the industry is adjusting as contemplated in the adjustment plan.

3.12 The Commission will after considering the merits of an application made on behalf of SACU industry decide to initiate an investigation if it is satisfied that there is *prima facie* proof of likelihood of recurrence of injury should the measures lapse.

3.13 In the event that the Commission makes a negative merit assessment, it shall inform the applicant concerned accordingly and supply it with adequate reasons for its decision.

4. Initiation

4.1 An investigation shall be formally initiated through publication of an initiation notice in the *Government Gazette*.

4.2 The initiation notice shall contain at least the following:

(a) the identity of the applicant;
(b) a detailed description of the product under investigation, including the tariff subheading applicable to the product;
(c) the country or countries of origin;
(d) a summary of the factors on which the allegation of serious injury is based;
(e) the address to which representations by interested parties should be directed; and
(f) the time frame for responses by interested parties.

4.3 A period of 20 days from the date of publication of the initiation notice will be provided for interested parties to submit comments to the Commission.

4.4 The investigation shall consist of a single investigation phase.

5. Essential facts

5.1 All participating interested parties will be informed of the essential facts to be considered by the Commission in making its final determination.

5.2 All interested parties will receive 7 days from dispatch of the essential facts letter to comment in writing on the essential facts.

5.3 The Commission may grant interested parties a single extension upon good cause shown if a written request for extension is received prior to the deadline, and the extension will apply only to the party to which such extension was granted.

5.4 The Commission will take all relevant comments on the essential facts into consideration in its final finding.

6. Final determination

6.1 The Commission will take all relevant comments on the essential facts that have been timeously submitted into consideration in its final determination.

6.2 The Commission's final recommendation will be forwarded to the Minister of Trade Industry and competition for final determination.

6.3 The Commission shall make available a final report on reasons and conclusions reached on issues of fact and law considered by the Commission once the Minister determination has been published.

The application should contain information as requested in following questionnaire marked as Annexure A.

Annexure A

APPLICATION FOR REMEDIAL ACTION AGAINST

THE INCREASED IMPORTS OF

[product(s)]

APPLICANT

Name :

Address :

1. Introduction

This questionnaire should be completed by an applicant requesting extension of safeguard measures. It is important that that applicant provides all the information required in the prescribed manner.

2. Purpose

The purpose of this questionnaire is to help the Southern African Customs Union (SACU) industry bring together in a concise and logical form the information needed by the International Trade Administration Commission (the Commission) to decide whether or not to initiate a formal investigation, and may also serve as a basis for further investigation.

3. Legal framework

3.1. Safeguards investigations are conducted in terms of the International Trade Administration Act, 2002 (Act 71 of 2002) (the ITA Act), and Safeguard Regulations read with the WTO Agreement on Safeguards.

3.2 If the application is based in part on confidential material the application must contain a non-confidential version of the confidential material together with an explanation of why it is confidential. Section 33 of the ITA Act provides as follows:

"(1) A person may, when submitting information to the Commission, identify information that the person claims to be information that –

is confidential by its nature; or

the person otherwise wishes to be recognised as confidential.

(2) A person making a claim in terms of subsection (1) must support that claim with

a written statement in the prescribed form-

explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of "information that is by nature confidential" in section 1(2); or

motivating, in the case of other information, why that information should be recognised as confidential; and

either –

a written abstract of the information in a non-confidential form; or

a sworn statement setting out the reasons why it is impossible to comply with subparagraph (i)."

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

Indicate where information has been omitted in each case;

Provide reasons for confidentiality in each instance;

Provide a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information in each instance; and

Where information is not susceptible to a non-confidential summary, indicate this in each instance and provide a sworn statement setting out the reasons why the information is not susceptible to summarisation.

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

4. General instructions

4.1 Applicants should provide full and accurate information. All cost related information should be reconcilable to the financial statements.

4.2 Please take note that the rules relating to confidential information and the submission of non-confidential versions of submissions applies to all correspondence, which unless clearly indicated to be confidential and filed together with a non-confidential version, will be placed on the non-confidential file and be made available to other interested parties.

4.3 The non-confidential file is available for inspection by interested parties at the Commission's offices, by appointment.

4.4 Note that interested parties are encouraged to inspect the non-confidential file regularly. The staff of the Commission will not check the non-confidential file on behalf of interested parties.

4.5 Information should be submitted in hard copies as well as in electronic format (compact disks). The Commission's computer system is based on Windows and it uses Excel and MS Word software. The discs must not be write protected and must be labelled clearly indicating:

- Applicant's name;
- Product(s) concerned;
- Type of information on the disc; Software used; and
- Whether or not confidential.

4.6 The application must be addressed to:
Senior Manager: Trade Remedies II
International Trade Administration Commission
DTI Campus, Uuzaji Block
Private Bag X 753

PRETORIA
77 Meintjies Street
Sunnyside, Pretoria

GLOSSARY

Commission	International Trade Administration Commission of South Africa
ITA Act	International Trade Administration Act, 71 of 2002
SACU	Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland)
WTO	World Trade Organisation
SGR	Safeguard Regulations
POI	Period of Investigation

SECTION A APPLICANT

Note: Should the Commission decide to initiate a formal investigation it will publish the notice of initiation of the investigation in the Government Gazette and will identify the applicant in the notice. The application can also be brought by a representative body.

A1 State the name, postal and street addresses, the telephone and fax numbers (including codes) and the E-mail address of your company.

Company: _____

Postal Address: _____

Physical Address: _____

_____

_____

Tel: (_____) _____

Email: _____

A2 State the names, telephone numbers of and positions held by the company's officers to be contacted.

Person: _____

Designation: _____

Direct line: (___) _____

Email: _____

A3 Indicate the exact location of your manufacturing site(s). (Map to reach your offices)

_____

_____

A4 Provide a diagram of your company's group structure and indicate the percentage stockholdings and cross-holdings. Indicate all shareholders holding more than 5% of equity in your company. Attach as Annexure A4.

A5 Indicate the legal structure of your firm, i.e. public or private company, closed corporation, etc.

_____

A6 Give a summary of any franchise, manufacturing, licensing, know-how, technology and distribution agreements in respect of inputs, manufacturing and outputs with regard to all products under investigation.

_____

_____

_____

A7 Have you appointed a consultant, legal or other representative to assist you in this application and/or ensuing investigation?

Yes/No.

If affirmative, please attach a copy of the letter of appointment, setting out the scope and duration of the appointment, as Annexure A7.

SECTION BDOMESTIC INDUSTRY

B1 If there is a representative organisation submit the following information:

(a) Names, address, telephone and fax numbers and E-mail addresses of and position held by the organisation's officers to be contacted;

Name of organisation: _____

Name of contact person: _____

Designation: _____

Postal address: _____ Physical address: _____

_____ _____

_____

Tel: (___) _____ Fax:(___) _____

Email: _____

Name the producers in the industry affiliated to the organisation. (Supply the company names, postal, street and E-mail addresses, telephone and fax numbers and the names of contact persons).

Company: _____ Postal address: _____ Physical address: Contact person: _____ Designation: _____ Tel: (___)_____ Fax: (___) _____ Email: _____	Company: _____ Postal address: _____ Physical address: Contact person: _____ Designation: _____ Tel: (___)_____ Fax: (___) _____ Email: _____

B2 Name all other producers constituting the SACU industry concerned. Give their company names, postal and physical addresses, telephone and fax numbers, E-mail addresses and the names of contact persons.

Safeguard Regulations provide that that producers representing at least 50% of the total volume produced by all producers that express an opinion on the investigation must support the application, and that a minimum of 25% (by production volume) of the total industry must support the application. Without this support ITAC cannot accept an application for investigation.

B3 Indicate the industry support and or opposition to the application in the following format:-

Industry Standing (Total domestic production of like goods for the 12 months preceding the lodging of the application)			
Producer	Production volume-Support Application	Production volume-Oppose application	Production volume-Neutral
Company name			
Other producers 1. 2. 3.			
Total SACU			

Letters of support for or opposition to the application must be attached to the application as Annexure B3.

SECTION C PRODUCTS

Note on like or directly competitive product

In terms of SGR 2 a like product is “a product which is identical, i.e. is alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.", while a directly competitive product is a product, other than a like product, that competes directly with the product under investigation.

C1 Imported (subject) product

Note If more than one type of imported product form part of this application, information should be submitted separately for each such product type.

C1.1 Describe the imported product in the following detail:

(a) Detailed physical description:

- scientific name.
- common name and
- trade name

(b) Main raw materials/components/inputs used.

(c) Production/manufacturing process used (if known).

(d) Technical characteristics (if known).

(e) Application/use

(f) Categories of users.

Substantiate your description with catalogues, brochures and other literature/samples.

C1.2 Enumerate in detail any differences between the imported product and the SACU like product

C1.3 Customs classification

Supply the following information:

Tariff subheading	Description	Unit of measurement	Rate of customs duty	Rebate provision item number	Rebate provision description

C1.4 Possible tariff loopholes

Indicate if you are aware of any loopholes in the tariff classification.

C2 SACU like product

C2.1 Describe the subject product that you produce:

(a) Detailed physical description

- Scientific name (if any)
- Common name
- Trade name

(b) Main raw materials/components/inputs used.

(c) Production/manufacturing process used.

(d) Technical characteristics.

(e) Application/use.

(f) Categories of users.

Substantiate your description with catalogues, brochures and other literature/samples.

C2.2 Statutory or other standards/specifications

Give details of all standards/specifications applicable to the product concerned in the SACU prescribed by law or otherwise.

SECTION D OTHER PARTIES

Note: As the Commission has to contact all the producers, exporters and importers concerned, provide full addresses, including telephone and fax numbers and email addresses.

D1 If known give the names, physical and postal addresses, telephone and fax numbers, and email addresses of:

(a) producers (subject) of the products exported to SACU;

(b) exporters to SACU; and

(d) SACU importers.

SECTION E SERIOUS INJURY

Note: Before the Commission can initiate a safeguard investigation it must have sufficient evidence to reach a reasonable conclusion that the increased imports are causing or threatening to cause serious injury to a SACU industry. The term industry refers to the domestic procedures as a whole of the like or directly competitive products or to those of them whose collective output of the products constitute a major proportion of the total domestic production of these products.

In terms of SGR 8.1 "serious injury shall be understood to mean a significant overall impairment in the position of the SACU industry."

In determining serious injury or a threat thereof to the SACU industry the Commission shall consider:
the rate and volume of the increase in imports of the product concerned
in absolute terms; or
relative to the production in SACU; and
whether there have been significant changes in the performance of the SACU industry in respect of the following potential injury factors:

- sales volume;
- profit and loss;
- output;
- market share;
- productivity;
- capacity utilisation;
- employment; and
- any other relevant factors placed before the Commission.

The information requested must relate only to the affected SACU product that is a like or directly competitive product to the product under investigation. Where the available data does not allow separate identification of the product in question, the information given must relate to the narrowest identifiable product group that includes the SACU product that is a like or directly competitive product to the product being the subject of the application.

F1 General information

F1.1 Provide a flow chart of your marketing/distribution channels for the product(s) concerned in the application and indicate the percentage off-take for each channel.

F1.2 Provide full details of your terms and conditions of sale to each class of customer, e.g. wholesaler, retailer, downstream producer, etc. Attach a copy of your standard terms and conditions as Annexure F1.2.

F1.3 Give the reasons and basis for your categorisation of customers.

F1.4 Enumerate major changes over the past three years in your answers to the above questions.

F2 FINANCIAL INFORMATION

Note: All financial information should be in a reconciled format. If such requested information is not readily available in the same format or needs adjustment or re-apportionment please qualify by way of explanatory notes or discuss the merits of the situation with the Commission.

F2.1 Indicate your normal accounting period.

F2.2 Indicate and provide short description of your accounting system, including a flow of transactions from placing an order to delivery.

F2.3 Provide copies of your audited financial statements, for the most recent three financial years. If your statutory statements do not include detailed accounts/schedules, please provide such accounts/schedules separately.)

F2.4 Provide copies of your year-to-date management accounts, for the last year of the POI. Provide ancillary schedules if not part of published accounts.

F2.5 Provide a separate sales and profit (before tax) contribution analysis for the POI, of all the product line items manufactured by your company, including a percentage analysis. The information should be sufficient to allow proper verification of your like product information.

The requested income statements should be analysed in a departmental or divisionalised format detailing the product concerned as a separate activity. The analysis should also be in respect of three prior financial years and the most recent year-to-date management accounts period. If the requested information is not available from your financial database, please discuss alternatives with officials of the Commission.

F3 IMPORTS

Give the following information on the imports of the product, being the subject of the application, for the POI and separately on a monthly basis for the last year of the POI.

F3.1 Annual import statistics

Provide import volumes and values per annum in the following format (State unit of measurement)

	20XX	20XX	20XX	Estimate
Volume				
Value				
Average unit price				

F3.2 Monthly import statistics

Attach as Annexure F3.2 a table indicating, the monthly volumes, values and unit prices of imports for the last 18 consecutive months.

F3.3 Own imports

Provide the information on your own imports of the product using the following format (state unit of measurement):

	20XX	20XX	20XX	Estimate
Volume				
Value				
Average unit price				

State your reasons for importing the product.

F4 Cost build-up

F4. 1 Please supply a cost build-up in the format indicated in Annexure F4. 1 Where your management accounts do not allow for the specific cost elements indicated in the pro forma, please indicate the information that is available and supply as much detail as possible.

The cost and price build-ups should refer to the average costs for the most recent 12-month period of the period of investigation.

F4.2 Indicate the production volume on which the cost and price build-ups are based.

F.4.3 Have any cost items provided in the cost build up been allocated? If so provide a detailed breakdown of the basis of allocation in each case that an allocation has been made.

F4.4.4 Supply a full Bill of Materials for the domestic like or directly competitive product indicating the cost and volume of each material or component as Annexure F4.4

F5 SACU INDUSTRY SALES AND MARKET SHARE

F5.1 Please supply the following information on your sales volume in SACU. State the unit of measurement.

	20xx	20xx	20xx	Estimate
sales volume				
Sales by other SACU producers				
Total volume of SACU sales by SACU producers				
Volume of imports				
market share				
Total market share held by SACU producers				
Market share held by imports				

F5.2 Attach as Annexure F5.2 a table indicating, in the same format us under section F5.1, the quarterly volumes, of imports for the last six consecutive quarters.

F5.3 Indicate how the information in paragraphs F5.1 and F5.2 supports your allegation of serious injury.

F5.4 If sales of the product is of a cyclical nature comment on the nature thereof, indicating the length of the cycle and the prices both during the up and down phases.

F6 profit/loss

F6.1 Supply the following information regarding your profit for the product concerned (where the information cannot be supplied separately for the product concerned indicate the group of products to which the profit applies and submit your calculations, indicating how costs and profit were allocated):

	20xx	20xx	20xx	Estimate
gross profit margin (%) gross profit per unit Units sold total gross profit				
net profit margin (%) net profit per unit Units sold net gross profit				

F6.2 Comment on the changes in profits.

F7 output

F7.1 Supply the following information regarding your actual production volumes over the POI:

	20xx	20xx	20xx	Estimate
total production of the product concerned production for SACU consumption				
Other SACU producers' production for SACU consumption				

F7.2 Comment on the changes in production, both total and for SACU consumption.

F8 Employment and productivity

F8.1 Provide the following information regarding employment and productivity:

	20xx	20xx	20xx	Estimate
Total production volume				
Number of employees (manufacturing only)				
Units per employee				
Total employment				
Total investment				
Output ratio *				

* Output ratio: Indicate the value of the output compared to the total investment in your company/industry

F9 capacity and capacity utilisation

F9.1 Supply the information requested below regarding capacity and capacity utilisation for the product concerned. State the unit of measurement.

	20xx	20xx	20xx	Estimate
capacity (units)				
actual production				
capacity utilisation %				
Rest of SACU capacity				
Rest of SACU production				
Rest of SACU capacity utilisation %				

F9.2 State the normal number of shifts per week, number of hours per shift and number of labour units involved, for each –

	20xx	20xx	20xx	Estimate
Your company Number of shifts				
Workers per shift				
Other SACU producers				

Number of shifts-				
Other SACU producers Workers per shift-				

F9.3 State whether your production capacity can be increased without additional machinery, equipment and buildings indicating the method (e.g. more shifts, hours or labour units) and the extent of the possible increase in terms of volume.

F10 Other injury information

Please indicate any other injury information to be considered by the Commission and not covered by the questions above.

SECTION G RELIEF SOUGHT

Indicate the relief sought.

SECTION H CERTIFICATION

The information submitted must be accompanied by the following certificate:

"I, the undersigned, certify that the information given above is complete and correct to the best of my knowledge and belief and that I have been authorised to represent

_____."

Company

_____ _____

Date Signature of authorised company official

_____

Name and title of authorised person **(in print)**

Cost and price build-up **ANNEXURE F4. 1**

	Products under investigation	All other products	Company total cost
1. **DIRECT COST:** Materials # - Imported - Domestic Waste recovery * Components * - Imported - Domestic Direct labour & related costs Re-tooling * Power & fuel Royalties, etc Variable overheads * Other *	***Separate cost analyses must be provided for each of the subject products in this format. Note that the cost data should reconcile to your company's income statement.***		
2. **FIXED OVERHEAD COST:** Direct labour Utilities * Repair & maintenance Rates & insurance R & D Plant depreciation Other *			
3. **TOTAL PRODUCTION COST:** 4. Operating profit			
5. **IN-STORE COST:** (3&4) 6. **SELLING & ADMINISTRATIVE EXPENSES:**			

Extension of safeguard measures application

Administrative expenses - salaries & wages - rent - rates & insurance - depreciation - other ***** Selling expenses - salespersons salaries - advertising - warranties & guarantees - warehousing - other ***** Other costs *****			
7. **TOTAL COST:** (5&6) 8. **PROFIT, ETC:** Subsidies Selling profit			
9. **SELLING (LIST) PRICE** (7&8) 10. **DISCOUNTS, ETC:** Discounts Settlements discounts Rebates			
11. **NET EX-FACTORY PRICE** (9&10) 12. Distribution costs *			
13. **NET DELIVERED PRICE** (11&12)			

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* - Supply a detailed breakdown of the items.

The cost and price build-ups should refer to the average costs for the most recent 12-month period of the POI.

PROCEDURES AND TIME LIMITS

All comments and submissions should be received by the Senior Manager: Trade Remedies II by no later than 30 days from the date hereof. Submissions and or enquiries are to be sent to ZXabendlini@itac.org.za.