

Draft
MMM
30.05.2023
20.06.2023
08.10.2023
30.10.2023
02.11.2023
12. 02.2024
26.02.2024
04.04.2024

Statutory Instrument No. of 2024

BOTSWANA TRADE COMMISSION ACT
(Cap. 42:14)

BOTSWANA TRADE COMMISSION (SAFEGUARDS) REGULATIONS, 2024
(Published on , 2024)

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SCHEDULE

Part I – Preliminary

IN EXERCISE of the powers conferred on the Minister of Trade and Industry by section 37 of the Botswana Trade Commission Act, the following Regulations are hereby made –

- Citation* 1. These Regulations may be cited as the Botswana Trade Commission (Safeguards) Regulations, 2024.
- Interpretation* 2. In these Regulations, unless the context otherwise requires –
- “c.i.f” means cost, insurance and freight;
- “directly competitive product” means a product, other than a like product, that competes directly 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” means 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;

“interested parties” include –

- (a) producers in SACU;
- (b) exporters in SACU;
- (c) foreign producers;
- (d) importers in SACU; or
- (e) trade or business association whose members are –
 - (i) SACU producers, exporters or importers, or
 - (ii) foreign producers, exporters or

importers, and

- (f) the governments of the countries of origin and export of the product under investigation.

“like product” means –

- (a) a product which is identical or 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 a product under investigation ,

whether the product has characteristics closely resembling those of the product under investigation the Commission may consider one or several factors –

- (i) the raw materials and other inputs used in producing the products,
- (ii) the production process,
- (iii) physical characteristics and appearance of the product,
- (iv) the end-use of the product,
- (v) the substitutability of the product with the product under investigation,
- (vi) tariff classification, or
- (vii) any other factor that the Commission considers relevant;

“participating interested parties” means the parties that have indicated their interest in participating in an investigation;

“related parties” means parties that are related for purposes of a safeguards investigation due to the following –

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

“SACU industry” means the domestic producers in the SACU who produce like products or those producers whose collective output products constitutes a major proportion of the total domestic production of these products; and

“WTO Agreement on Agriculture” means the agreement by WTO members which came into force on 1 January 1995 with the objective to establish a fair and market-oriented agricultural trading system.

Application

3. These Regulations shall apply to a safeguards investigation.

Part II – Application for safeguards investigation

Application for general safeguards investigation

4. (1) A SACU industry or a person acting on behalf of the SACU industry shall in writing, apply to the Commission for a general safeguards investigation.

(2) An application referred to under subregulation (1) shall be as set out in the Schedule and accompanied by a fee of P500.

(3) The application shall include evidence that the product under investigation is being imported into Botswana or the Common Customs Area of SACU –

(a) in such increased quantities, absolute or relative to SACU production; and

(b) under such conditions as to cause or threaten to cause serious injury to the SACU industry that produces like or directly competitive products.

(4) The Commission shall regard the application as brought by or on behalf of the SACU industry where –

(a) at least 25 percent of the SACU producers by domestic production volume support the application; and

(b) of the producers that express an opinion on the application, at least 50 percent by domestic production volume, support such application.

(5) The Commission may, in industries of an exceptionally large number of producers, determine support and opposition by

reference to the –

- (a) largest number of producers that may reasonably be included in the investigation; or
- (b) use statistically valid sampling techniques based on the information available to the Commission at the time of its finding.

(6) Notwithstanding subregulation (1), the Commission may initiate a general safeguards investigation without having received a written application from the SACU industry.

Application for special safeguard investigation

5.(1) Notwithstanding regulation 4, a SACU industry or a person acting on behalf of the SACU industry shall in writing, apply to the Commission for a special safeguards investigation.

(2) An application referred to under subregulation (1) shall be as set out in the Schedule and accompanied by a fee of P500.

(3) A special safeguards investigation application shall include evidence that the –

- (a) 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 WTO Agreement on Agriculture; and
- (b) 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 for the product concerned.

Evidence and information required in application for investigation

6.(1) A written request for the application under regulations 4 and 5 of a safeguards measure shall include the following –

- (a) the names and addresses of the entities represented in the application;
- (b) a full description of the imported product under

investigation and shall specify the –

- (i) tariff code under which such product is classified, and
- (ii) full description of SACU like or directly competitive product concerned;
- (c) information relevant to the existence of serious injury or threat thereof to the SACU industry;
- (d) names of the countries of export or origin of the product under investigation;
- (e) identity of all known foreign exporters or producers of the product under investigation;
- (f) unforeseen developments that led to the increased imports;
- (g) statement on the form and duration of the safeguards measures sought;
- (h) statement of the efforts being taken or to be taken by the SACU industry to make a positive adjustment to import competition; and
- (i) any other information required by the Commission.

Acknowledgment of receipt of application

7. The Commission shall, in writing –

- (a) acknowledge receipt of the application submitted under regulations 4 and 5 within five days from the date of receiving the application; and
- (b) communicate the name and contact details of the assigned lead investigating officer.

Compliance assessment of application

8.(1) Upon receipt of the application, the Commission shall assess the application and may decide that the application is deficient if one or more of the following is applicable –

- (a) the application is not in the manner and format set out by the Commission;
- (b) the requested information under regulation 6 has not been provided in full; and
- (c) the application contains confidential information and the applicant has failed to provide a non confidential version in terms of regulation 9.

Confidentiality

9.(1) An applicant or any interested party providing confidential information in any correspondence shall furnish non confidential summaries thereof and the summaries shall indicate in each instance the reasons for confidentiality.

(2) The non confidential information shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

(3) The Commission shall keep confidential information which –

- (a) by nature is confidential;
- (b) if disclosed could have a significant adverse effect upon the owner of or a person supplying the information; and
- (c) was provided on a confidential basis by parties to an investigation.

(4) Subject to subregulation (3) (a), the following types of information shall be deemed to be confidential by nature –

- (a) information concerning the financial condition of a company which is not publicly available including –
 - (i) management accounts,
 - (ii) financial accounts of a private company,
 - (iii) actual individual sale prices,

- (iv) actual costs, including cost of production and importation cost,
- (v) production volume, and
- (vi) information, the release of which may have significant adverse effect on –
 - (aa) the owner of, or
 - (bb) the person who provided the information; and
- (b) information that would be of significant competitive advantage to a competitor of the owner of the information.

(5) The Commission shall consider a request made under subregulation (1) and shall immediately inform the party submitting the information, in writing, and state reasons where it considers that the request for confidential treatment is not warranted.

(6) The Commission may disregard any information indicated to be confidential where the information is not accompanied by a non confidential summary as required in subregulation (1).

(7) A party aggrieved by the decision of the Commission to disregard any information indicated to be confidential, may appeal to the Minister within 14 calendar days.

(8) The Commission may not disregard any information indicated to be confidential until the Minister determines the application made under subregulation (7) or until 14 days have elapsed where no application is made to the Minister.

Deficient application

10.(1) The Commission shall inform an applicant in writing, to correct a deficiency.

(2) The applicant shall address the deficiency under subregulation (1) within seven days from the date the applicant is informed of the deficiency.

(3) The Commission shall not consider any submission which is

deficient, after the deadline under subregulation (2) for the purpose of the Commission's preliminary finding to the Board.

Merit assessment of application

11.(1) The Commission shall evaluate an application for an investigation and where the Commission rejects the application, the Commission shall notify the applicant of the reasons why such application was rejected.

(2) The Commission shall notify the applicant of the reasons for the rejection within seven days of the Commission's determination.

(3) For special safeguards, the Commission shall determine whether there is sufficient information to establish a *prima facie* case that –

(a) the volume of imports entering the SACU area exceeds the trigger level which relates to existing market access opportunity; or

(b) 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.

(4) Where the Commission approves the application, the Commission shall submit a preliminary recommendation to initiate the investigation to the Board.

(5) Where the Board, using information reasonably available, determine that there is insufficient information to establish a *prima facie* case that the SACU industry experiences serious injury or a threat of serious injury as a result of unforeseen import surge, the Board shall not authorise the Commission to initiate the investigation.

Part III – Serious injuries

Serious injury

12.(1) In this regulation, “serious injury” means a significant overall impairment in the position of the SACU industry.

(2) The Commission shall determine whether an increase in imports of the product under investigation has caused serious injury

to a SACU industry after an evaluation of all relevant factors in particular –

- (a) the rate and amount of the increase in imports of the product that is being investigated –
 - (i) in absolute terms,
 - (ii) relative to production, and
 - (iii) demand of like or directly competitive products;
- (b) the share of the SACU market taken by increased imports of the product that is being investigated;
- (c) the prices of the product under investigation, mainly for the purposes of determining whether prices lower than those of the SACU product or the product that competes with it directly, have been recorded;
- (d) the impact of increased imports of the product under investigation on the SACU industry, as evidenced by relevant indicators including –
 - (i) production,
 - (ii) capacity utilisation,
 - (iii) sales,
 - (iv) market share,
 - (v) prices, where the domestic price declines or the failure of domestic prices to increase as they otherwise would have done in the absence of an increase,
 - (vi) profits and losses,
 - (vii) return on investments,

- (viii) cash flow,
- (ix) employment, and
- (x) any other relevant factors placed before the Commission.

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

(4) Each of the factors mentioned in subregulation (2) shall be considered for the like and directly competitive products only and where such analysis is not possible, for the narrowest group of products for which such analysis may be made.

Threat of serious injury

13.(1) A determination of threat of serious injury shall be based on facts and not on allegations, conjectures or remote possibilities.

(2) In making a determination regarding the existence of a threat of serious injury, the Commission shall consider among others the following, a substantial increase in production capacity of the foreign exporters indicating the likelihood of substantially increased exports to SACU.

(3) The totality of the factors considered in subregulation (2) shall lead to the conclusion that –

- (a) further increased imports are imminent; and
- (b) unless protective action is taken, serious injury will occur.

Causality

14.(1) The Commission may only determine that increased imports of the product under investigation have caused or are threatening to cause serious injury to the SACU industry if it concludes that there is genuine and substantial relationship of cause and effect between the increased imports and the actual, threat of serious injury.

(2) Where there are factors other than increased imports of the product under investigation which are simultaneously causing or threatening to cause serious injury to the SACU industry, such injury shall not be attributed to the increased imports.

Part IV – Investigation process and reports

*Notification after
Board approval to
initiate investigation*

15.(1) Where the Board approves a recommendation to initiate an investigation, the Commission shall –

(a) inform any known interested party of the initiation of the investigation; and

(b) supply such party with all relevant documentation inclusive of the non confidential version of the application, unless the number of interested parties makes it impracticable to supply the parties with the relevant documentation.

(2) The Commission shall cause a public notice initiating the investigation to be published in the *Gazette*, in order to allow an interested party to make comments on the application within 30 days.

(3) Notwithstanding subregulation (2), interested parties may request for an extension of time to make comments and the Commission may grant an extension period of two weeks, taking into account the time limits for investigation.

(4) The notice in terms of subregulation (2) shall include the following information –

(a) identity of the applicant;

(b) a complete description of the product that is being investigated, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;

(c) a complete description of the SACU product or the product that competes with it directly, including their technical characteristics and uses;

- (d) a country of origin of the investigative product;
- (e) summary of the unforeseen developments that led to the increase in imports of the product that is being investigated;
- (f) the address where information and comments shall be submitted;
- (g) the date of initiation of the investigation;
- (h) the proposed schedule for the investigation; and
- (i) the time period for publication and due date for representations.

(5) All interested parties shall be deemed to have received notice seven days after the dispatch or publication of the said notice by the Commission.

(6) The Commission shall inform the SACU Secretariat of the Board's decision to initiate an investigation.

(7) The Commission may request or gather additional information, at any stage of the investigation.

(8) 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.

*Response by
interested party*

16.(1) The Commission shall issue a questionnaire, in a format to be determined by the Commission, to an interested party so that the interested party may note its response to the public notice under regulation 15(2).

(2) A representation that is not accompanied by a non confidential version and is not clearly indicated as confidential may be treated as non confidential.

(3) Notwithstanding subregulation (2), a failure to comply with this provision may result in the submission being regarded as deficient.

(4) All interested parties shall within 20 days of the initiation of investigation make their representations.

(5) Notwithstanding subregulation (4), the Commission may on request, grant an extension for the submission of comments.

(6) The Commission may request for additional information from any participating interested party at any stage of the investigation and may prescribe a deadline for the submission of such information.

Verifications

17.(1) The Commission may conduct on the spot investigations to verify or obtain further details concerning the information provided and where such investigations are conducted, the Commission shall prepare a report describing the findings of the verification which verification report, with the exception of any confidential information, shall be placed immediately in the public file.

(2) An interested party shall within seven days, give comments on the verification report and the Commission may upon request, and good cause shown, grant an extension.

Oral hearings

18. (1) A party may, giving reasons, request for its case to be heard orally.

(2) Subject to subregulation (1), the Commission may reject the request for oral presentation where it determines that –

(a) substantially similar information has already been submitted in written form to the Commission;

(b) a written submission, in the Commission's view, adequately sets out the matter intended for an oral presentation; or

(c) presentation would unduly delay finalisation of the investigation.

(3) The interested party shall on the request of the Commission, provide an agenda for the oral hearing presentation.

(4) Where an interested party has been granted an opportunity to make oral submissions, the oral submissions shall not be taken into consideration unless the party subsequently makes written submissions of the oral submissions.

Preliminary report

19.(1) In the event that a request for the imposition of a provisional safeguard measure is considered or made, the Commission shall make available a public report within seven days of the publication of its preliminary finding.

(2) The preliminary report shall contain a minimum of the following information –

- (a) identity of the applicant;
- (b) a full description of the product under investigation, directly competitive products and 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 lead to the increased imports;
- (i) the Commission's finding, including the preliminary safeguards measure requested; and
- (j) all relevant issues of fact and law considered by the Commission in reaching its preliminary determination.

(3) Where possible, the Commission shall forward the

preliminary report directly to all participating interested parties.

(4) The Commission shall use any other communication means where the number of participating interested parties makes it impracticable to share the report.

Comments on preliminary report

20.(1) All participating parties shall within 14 days from the date the preliminary report is made available, make comments on the report in writing.

(2) The Commission may grant an interested party an extension on the deadline under subregulation (1) where such interested party shows good cause why an extension should be granted.

Non-cooperation

21. In the event that interested parties do not cooperate in the investigation, the Commission may rely on the facts available.

Part V – Measures and determinations on investigations

Provisional measures

22.(1) In critical circumstances where a delay may cause damage which may be difficult to repair, and pursuant to a preliminary determination that increased imports are substantial cause of, or threaten to substantially cause serious injury to the domestic industry, the Commission shall make a recommendation to the SACU Tariff Board for the imposition of provisional measures.

(2) When making a recommendation to SACU Tariff Board, the Commission may consider –

- (a) whether the provisional measure is in the public interest;
- (b) whether imposition of a provisional measure will result in an economic crisis; and
- (c) the extent to which such imposition shall cause a shortage of the product under investigation in the Botswana market.

(4) Provisional payments may be imposed for a maximum period of 200 days.

(5) The period for which provisional measures are in force shall be regarded as part of the total duration for which safeguards measures are in force.

(6) The Commission shall provide an opportunity for consultations with participating interested parties within 14 days of the imposition of a provisional payment.

*Final determination
by Board*

23.(1) Upon conclusion of the investigations, the Commission shall submit recommendations to the Board in terms of section 31(6) of the Act.

(2) Upon receipt of the recommendations in terms of subregulation (1), the Board shall make recommendations on its final determinations to the SACU Tariff Board after considering whether –

(a) the SACU industry experiences serious injury or threat of serious injury, as mentioned in regulations 12 and 13;

(b) there are increased imports;

(c) any increase in imports may be attributed to unforeseen developments;

(d) the increased imports have resulted in serious injury or threat thereof to the SACU industry; or

(e) the imposition of a safeguards measure is in the public interest.

(3) In determining whether a safeguards measure is in the public interest, the Board shall consider the trade distorting effect of the surge in imports and the need to restore effective competition.

(4) Where the Board makes a negative final determination, it shall cause for the Commission to terminate the investigation and

publish a notice of the negative determination stating the reasons thereof.

(5) Where the Board makes an affirmative determination, it shall recommend to the SACU Tariff Board for the imposition of a definitive safeguards measure on the product under investigation.

(6) The recommendation in terms of subregulation (5) shall be accompanied by a report which reflects all issues mentioned in subregulation (2).

Communication of the final decision of SACU Council

24.(1) The Commission shall after consideration by the SACU Council inform the applicant in writing, the outcome of the application.

(2) The Commission shall publish in the *Gazette*, a notice on the decision of the SACU Council giving details of the findings and conclusions reached on all issues of fact and law which led to the decision.

(3) The notice referred to in subregulation (1) shall contain the following information –

- (a) identity of the applicant;
- (b) a full description of the product under investigation, the directly competitive products and the tariff classifications;
- (c) initiation date and notice number;
- (d) a summary of the affirmative injury determination, the injury factors considered and the relevance thereof;
- (e) an evaluation of the causality factors considered;
- (f) the unforeseen developments that lead to the increased imports;
- (g) the form, level and duration of the imposed definitive safeguards measure; and
- (h) the proposed date of application of the definitive

safeguards measure.

*Public file and
its access*

25.(1) The Commission shall establish and maintain a public file relating to each investigation conducted under these Regulations.

(2) The public file shall contain –

- (a) all written determinations and public notices relating to the investigations;
- (b) all other information developed or obtained by the Commission including any verification report prepared in terms of regulation 17;
- (c) the record of any hearing conducted in terms of regulation 18; and
- (d) any other document the Commission considers appropriate for public disclosure.

(3) The public file shall be available to the general public, during normal working hours, for perusal at the offices of the Commission throughout the course of the investigation.

*Withdrawal of
application for
investigation*

26. Where a SACU producer withdraws the application or its support thereof after an investigation has been initiated, the Commission may –

- (a) terminate the investigation; or
- (b) disregard the withdrawal and continue with its investigation where it determines that it is in the public interest to continue the investigation.

Consultations

27.(1) The Commission shall provide for consultations with the representatives of countries that have a substantial interest in a general safeguards investigation.

(2) Consultations in terms of subregulation (1) shall be concluded within 30 days after the publication of the Commission's preliminary report.

(3) The Commission shall provide representatives of countries

that have a substantial interest in a general safeguards investigation, 30 days for consultations prior to the application or extension of a definitive safeguards measure with a view to –

- (a) review the information relating to the –
 - (i) evidence of serious injury or threat thereof caused by increased imports,
 - (ii) precise description of the product involved,
 - (iii) proposed measure,
 - (iv) proposed date of introduction,
 - (v) expected duration of the measure, and
 - (vi) 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 in relation to that country.

(4) In cases where it is proposed that a general safeguards measure shall be extended, the Commission shall in addition to the factors under subregulation (3), provide evidence that the relevant SACU industry is adjusting.

(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 safeguards measure.

Part VI – Definitive safeguards measures

Form of definitive safeguards measure

28.(1) A safeguards measure shall be applied only to –

- (a) the extent necessary to prevent or remedy serious injury or threat thereof; and

(b) facilitate adjustment of the SACU industry.

(2) The SACU industry shall be required to submit a plan indicating how it will adjust to increase its competitiveness and such adjustment plan shall reach the Commission no later than 60 days after initiation of the investigation in the *Gazette*.

(3) The Commission may grant an extension for the submission of an adjustment plan.

(4) A definitive safeguards measure may be in the form of a –

(a) customs duty;

(b) quantitative restriction; or

(c) combination of the measures mentioned under paragraphs (a) and (b).

(5) Where a quantitative restriction is used, the determined quantities for each country shall not be less than the average volume of imports for the most recent three years:

Provided clear justification is given that a different level is necessary to prevent or remove the injury.

(6) In cases where a quota is allocated among supplying countries, shares shall be allotted based upon the proportions supplied by such members during a previous representative period, of the total quantity or value of imports of the product:

Provided justified reasons for not applying this rule are given.

(7) Notwithstanding subregulation (5), there may be a deviation where –

(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 of subregulation (5) are justified;
- (e) the conditions of such departure are equitable to all suppliers of the product concerned; or
- (f) the suppliers failed to cooperate in the investigation.

Duration of definitive safeguards measure 29.(1) A safeguards measure can only be in place for a period not exceeding four years including the duration of the provisional measure where applied for.

(2) The application thereof may be extended by another two years where the SACU Council finds that –

- (a) the lapse of the safeguards measure imposed is likely to lead to the recurrence of serious injury; and
- (b) there is evidence that the SACU industry is adjusting.

(3) A safeguards measure imposed may not be extended beyond the initial period for which it was imposed.

(4) A safeguards measure shall not be applied to the imports of a product which has been previously subject to a safeguards measure:

Provided that the period of non-application is at least two years.

(5) Notwithstanding the provisions of subregulation (4), a measure with a duration of 180 days or less may be applied again to the import of a product where –

- (a) a minimum of one year has elapsed since the date of introduction of a safeguards measure on the import

of that product; and

- (b) such a safeguards 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.

- (6) Subject to regulation 30, a safeguards measure shall be applied to all imports of the product under investigation irrespective of its source.

Non-application of definitive safeguards measure to developing countries

30.(1) Safeguards 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 percent:

Provided that developing countries with less than three percent import share, collectively account for not more than nine percent of total imports of the product concerned.

- (2) A developing country exempted from the application of a safeguards measure may become subject to such safeguards measure without a new investigation being conducted where, subsequent to the imposition of the safeguards measure, its share of the imports increases to a level that exceeds three percent of the total import volume in the original investigation period.

Review of definitive safeguards measure

31.(1) Where a definitive safeguards measure remains in effect, the Commission shall monitor developments with respect to the SACU industry, including the progress and specific efforts made by the SACU industry to make a positive adjustment to import competition.

- (2) Where a safeguards measure is imposed for a period exceeding three years, the Commission shall initiate a review of the measure at the halfway mark of the application of the safeguards measure to determine whether the continued application of the safeguards measure is required and the safeguards measure cannot be liberalised at an increased pace.

- (3) The Commission may, on the basis of the review in terms of subregulation (2), recommend to SACU Tariff Board to maintain, withdraw the definitive safeguards measure or to increase the pace

of liberalisation.

(4) The Commission shall publish in the *Gazette* and share with the interested parties the notice, summarising the final determination of the SACU Council on the review.

Extension and re-application of safeguards measures

32.(1) An applicant may request an extension of the measure where the action continues to be necessary to prevent or remedy the serious injury, and there is evidence that the SACU industry is making positive adjustment to import competition.

(2) Where an extension is granted by SACU Council, regulation 27 (3) shall apply with the necessary modifications.

Special safeguards measure on agricultural products in terms of WTO Agreement on Agriculture

33.(1) A special safeguards 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 WTO Agreement on Agriculture 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.

(2) A special safeguards measure shall be applied to imports from all countries.

(3) A special safeguards measure imposed in terms of Article 5 of WTO Agreement on Agriculture 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.

(4) The investigation of the merits of a special safeguards measure and the implementation thereof are subject to prescribed notifications and consultations between SACU, its trading partners and the WTO.

(5) A definitive special safeguards measure in terms of Article 5 of the WTO Agreement on Agriculture may be applied only where –

- (a) 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 a Department of Agriculture, or any other relevant government institution during the three preceding years for which data is available –

- (i) where such market access opportunities for a product are less than or equal to 10 percent, the base trigger level shall equal 125 percent,
 - (ii) where such market access opportunities for a product are greater than 10 percent but less than or equal to 30 percent, the base trigger level shall equal 110 percent, and
 - (iii) where such market access opportunities for a product are greater than 30 percent, the base trigger level shall equal 105 percent; and
- (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 as expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price for the product concerned.

(6) The Commission shall –

- (a) count imports under current and minimum access commitments established as part of a concession for the purpose of determining the volume of imports required for invoking the provisions of Article 5 of the WTO Agreement on Agriculture, but the reference price used to invoke the provisions of this subregulation shall –
 - (i) in general, be the average c.i.f. unit value of the product concerned, or
 - (ii) be an appropriate price in terms of the quality of the product and its stage of processing;

(b) ensure that imports under such commitment shall not be affected by any additional duty imposed under Article 5 of the WTO Agreement on Agriculture.

(7) Any supplies of the product in question which were *en route* on the basis of a contract settled before the additional duty shall be exempted from any such additional duty:

Provided that the supplies 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 WTO Agreement on Agriculture.

(8) The Commission, in considering the recommendation of a definitive general safeguards measure, may take into consideration the requirement of compensation to countries whose exports will be substantially affected by any safeguards measure.

(9) Nothing in these Regulations prevents the industry producing products for which Botswana has reserved its right to apply a special safeguards measure mentioned in Article 5 of the WTO Agreement on Agriculture, to request the Commission for general safeguards action, in terms of the WTO Agreement on Safeguards.

(10) Nothing in these Regulations shall preclude the Commission from taking safeguards action provided for in terms of a free trade agreement concluded between Botswana or the SACU and any other country or customs territory.

(11) Any safeguards action taken in terms of subregulation (10) shall be in line with the terms and conditions agreed upon in such free trade agreement.

(12) Nothing in these Regulations shall preclude the Commission from taking special safeguards action in terms of any country's Protocol of Accession to the World Trade Organisation.

(13) Any safeguards action taken in terms of subregulation (12) shall be in line with the terms and conditions stated in the Protocol

of Accession.

(14) All the provisions of these Regulations, with the exception of regulations 6(1) (c) – (h), 11(1), 12, 13, 14, 15(4) (c)-(e), 16, 21, 22, 23(2), 24(3) (d)-(f), 28, 29 and 30 shall apply with the necessary modification to investigations by the Commission on agricultural goods in terms of which Botswana or SACU region has reserved its right to apply a special safeguards measure in terms of Article 5 of WTO Agreement on Agriculture.

(15) The additional duty imposed after a special safeguards investigation initiated in terms of Article 5 of WTO Agreement on Agriculture 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 percent 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 percent but less than or equal to 40 percent of the trigger price, the additional duty shall equal 30 percent of the amount by which the difference exceeds 10 percent;
- (c) if the difference is greater than 40 percent but less than or equal to 60 percent of the trigger price, the additional duty shall equal 50 percent of the amount by which the difference exceeds 40 percent, plus the additional duty allowed under (b);
- (d) if the difference is greater than 60 percent but less than or equal to 75 percent, the additional duty shall equal 70 percent of the amount by which the difference exceeds 60 percent of the trigger price, plus the additional duties allowed under paragraphs (b) and (c); and
- (e) if the difference is greater than 75 percent of the trigger price, the additional duty shall equal 90

percent of the amount by which the difference exceeds 75 percent, plus the additional duties allowed under paragraphs (b), (c) and (d).

Judicial reviews of preliminary decisions

34. (1) An aggrieved party may approach the High Court against a decision of the Commission for a judicial review.

(2) Participating interested parties may challenge preliminary decisions or the Commission's procedures prior to the finalisation of an investigation in cases where it can be demonstrated that the –

(a) Commission has acted contrary to the provisions of the Act or these Regulations; or

(b) Commission's action or omission has resulted in serious prejudice to the complainant.

(3) An application for judicial review shall not operate as a stay of the decision of the Commission.

Notification to WTO Committee on Safeguards

35. The Commission shall notify the Committee on Safeguards of the WTO when initiating investigations relating to safeguards and when adopting a provisional general safeguards measure, following a positive preliminary determination.

International obligations

36. These Regulations shall apply in conformity with the obligations Botswana has under the GATT 1994 and the Agreement on Safeguards.

SCHEDULE

Application for safeguards investigation
(regulations 4(2), 5(2) and 16(1))



BOTC
Botswana Trade
Commission

(insert product under investigation)

1. Introduction

This questionnaire should be completed by an applicant requesting remedial action against an alleged increase in imports causing serious injury to the Southern African Customs Union (SACU) industry. It is important that the applicant provides all the information required in the prescribed manner.

2. Purpose

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

2.1 When completing the questionnaire, please read all the instructions carefully. The applicant should be aware that its response to the questionnaire and any subsequent

additional requests formulated by the Commission will constitute the basis of which preliminary and final findings will be made regarding the application. Non-submission of all relevant information or the submission of incomplete information can have unfavourable consequences on the outcome of the application. In this respect, it is essential that the applicant's reply to the questionnaire is accurate and complete as possible and should attach supporting documents. **Do not leave any question or section blank.**

2.2 It is possible that some questions will not be relevant to your situation and, in those circumstances, a brief explanation of the reasons why you have not responded should be provided. On the other hand, there may be matters not covered in the questionnaire that you believe should be addressed. If this is so, please include those details in Section I.

2.3 The information provided should be strictly as per the questionnaire and preferably be in the same order as in the questionnaire.

2.4 Before answering the questionnaire, we suggest that you read the BOTC Act and the Safeguards Regulations, copies of which are available at: www.botc.org.bw

3.0 LEGAL BASIS OF SAFEGUARDS MEASURES

3.1 Safeguards investigations are conducted in terms of the BOTC Act of 2013 and Safeguards Regulations read with the World Trade Organisation (WTO) Agreement on Safeguards measures that are provided for in Article XIX of the General Agreement on Tariffs and Trade (GATT) of 1994.

The GATT stipulates that "If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

3.2 The Safeguards investigation will be conducted in terms of (i) the Botswana Trade Commission (Commission) Act which mandates the Commission to investigate allegations of import surges within SACU and (ii) Safeguards Regulations (SR) which provide for the manner in which the investigations are to be initiated and conducted.

4.0 SUBMISSION OF INFORMATION

4.1 If the application is based on confidential information, the applicant shall attach a non confidential summary to the application and the non confidential summary must be in sufficient detail to permit a reasonable understanding of the confidential information. For non confidential versions, parties must provide reasons for confidentiality in each instance. Where information is not susceptible to a non confidential summary, indicate this in each instance and provide an affidavit setting out the reasons why the information is not susceptible to summarisation.

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.

- (1) A person may, when submitting information to the Commission, identify information that the person claims to be information that;
 - (a) is confidential by its nature; or
 - (b) the person otherwise wishes to be recognised as confidential.
- (2) A person making a claim in terms of subsection (1) must support that claim with
 - (a) a written statement in the prescribed form-
 - (i) explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of “information that is by nature confidential” in section 1(2); or
 - (ii) motivating, in the case of other information, why that information should be recognised as confidential; and
 - (b) either –
 - (i) a written abstract of the information in a non confidential form; or

- (ii) 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:

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

4.2 The Commission will not formally accept an application until a proper non confidential version has been submitted in accordance with the above guidelines. In the instance that an application contains confidential information, and the applicant fails to attach a proper non confidential version, the Commission will not be in a position to regard the complaint as a properly documented application and no investigation can be initiated.

4.3 The response to this questionnaire, as well as to any other additional request formulated by the Commission, is to be made in hard copy and electronic form. Regarding hard copy submissions, the applicant must submit one (1) original and three (3) copies of the original (both confidential and non confidential versions) and address same to:

Chief Executive Officer
Botswana Trade Commission
Plot 55745, Main Airport Road
Block 8 BOBS Building
Private Bag 3AAD
Poso House
Gaborone

4.4 General instructions

- 4.4.1 Applicants should provide full and accurate information and provide any supporting documentary evidence from commercial or governmental sources, e.g. official trade and production statistics. Failure to do so could detrimentally affect your case. The Commission will not consider unsubstantiated information. All cost related information should be reconcilable to the financial statements or management accounts.
- 4.4.2 Please take note that the rules relating to confidential information and the submission of non confidential versions of submissions apply 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.
- 4.4.3 If a document is indicated to be confidential but a proper non confidential document complying with the above-mentioned rules is not filed, then the document will not be taken into consideration by the Commission. The non confidential file is available for inspection by interested parties at the Commission's offices, by appointment.
- 4.4.4 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 Regarding electronic submissions, both confidential and non confidential versions must be submitted electronically and must be made on a flash drive, which must not be write-protected and labelled clearly indicating (i) applicant's name, (ii) product(s) concerned and (iii) whether the information is confidential or non confidential.
- 4.6 Further to the above mandatory submission formats, the applicant has an option to make additional submissions by email to (info@botc.org.bw). However, it must be noted that submission by email may be insecure and compromise the proprietary information of the applicant and interested parties. If the applicant chooses this option, it does so at its own risk and the Commission is indemnified from any liability that may arise thereto.

4.7 Any documents, whether hard copies or electronic submissions, not complying with the above formalities may be returned to the party submitting them and not be used by the Commission for the purpose of this investigation.

5.0 VERIFICATION OF INFORMATION PROVIDED

The Commission has authority to verify any information provided in response to the questionnaire or any subsequent information provided.

6.0 LANGUAGE OF THE INVESTIGATION

The investigation is to be conducted in English and therefore only information for which an English version or translation is provided will be considered in the investigation.

7.0 FALSE STATEMENTS

Any person who knowingly or willfully provides false, misleading or incorrect information to the Commission, whether in an application received hereunder or, otherwise in connection with an investigation under the BOTC Act, shall be guilty of an offence and shall on conviction be liable to a fine of P2,000 (Two Thousand Pula) or to imprisonment for a term not exceeding two years or both.

8.0 PUBLIC FILE

The Commission is required to ensure that all interested parties are given reasonable opportunity to have access to all non confidential information that is relevant to the presentation of their cases and that is used by the Commission in the investigation. To meet this requirement, all non confidential documents relating to an investigation will be placed on a public file accessible to the public.

9.0 ASSISTANCE WITH QUESTIONNAIRE

In the event the applicant encounters any difficulty in interpreting the information requested in this questionnaire, contact can be made to the officers in charge of the investigation.

SECTION A: APPLICANT'S INFORMATION

A1. Identify your company

Name:

Legal form: (whether public company/private company/closed corporation/other(specify):

Postal Address:

Physical Address:

Telephone No:

Fax No:

Webpage:

E-mail Address:

A2. Identify the authorised contact person of your company

Name:

Designation:

Postal Address:

Physical Address:

Telephone No:

Fax No:

E-mail address:

The contact person

*Note: The contact person should be somebody that has been involved with the completion of the Questionnaire and that would be in a position to answer questions the Commission might raise.

A3. Representative

3.1 If you have appointed a representative to assist you in this proceeding, please provide following details about the representative:

Name:

Address:

Telephone No:

Fax No:

E-mail address:

- 3.2 Attach a copy of the letter of appointment, a template is enclosed as **Annexure A-3**.
Alternatively, if you have appointed a legal representative to assist you in these proceedings, attach the original Power of Attorney.

*Note: Without authorisation in accordance, the Commission will only liaise with the contact person and cannot engage in any contact with the nominated representative. This is to protect the Commission and prevent the unauthorised release of any information that might be regarded as confidential.

A4. Company structure

- 4.1 Supply a detailed diagram outlining the organisational structure of your company and attach it as **Annexure A-4.1**.
- 4.2 Indicate all shareholders holding more than 5% of equity in your company in the following format and attach as **Annexure A-4.2**:

Name of Shareholder	Number of shares	Percentage shareholding
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- 4.3 Kindly include the following information:

4.3.1 Articles of Association (if applicable);

4.3.2 Company constitution (if applicable);

4.3.3 Proof of registration of the company with the competent authorities;

4.3.4 Shareholding certificate issued by the competent authorities (if applicable); and

4.3.5 Minutes of Board of Directors /shareholders meeting authorising the applicant to lodge the application.

- 4.4 Please provide the corporate structure for your company's affiliations, including parent companies, subsidiaries or other related companies (if applicable) and attach it as **Annexure A-4.4**.

*Note: As regards corporate structure, where the applicant is an association, the information under question 4 should be completed, insofar as is possible, for each of its members individually.

4.5 Financial information

- 4.5.1 State the financial year of the applicant.

- 4.5.2 Enclose copies of the Audited accounts (consolidated and unconsolidated, if applicable) including balance sheet, profit and loss accounts and all reports, notes, and auditor's opinion to these documents.
- 4.5.3 Please describe the accounting principles and practices used by the company. Also provide a description of the cost accounting system used by the company.
- 4.5.4 Enclose internal financial statements, management reports, cost reviews, etc. which are prepared and maintained by the company for the product concerned.
- 4.6. Range of products
 - 4.6.1. Please indicate the products manufactured/imported/traded and sold by your company, preferably for the period of investigation, and specifically provide details on the following:
 - 4.6.1.1. product name;
 - 4.6.1.2. technical characteristics and physical appearance;
 - 4.6.1.3. the main raw materials/components/inputs used in the production;
 - 4.6.1.4. production process;
 - 4.6.1.5. the application and end-use of the products; and
 - 4.6.1.6. tariff classification as follows:

Tariff subheading	Description	Unit measurement	of	Rate of customs duty	Rebate item number	provision	Rebate description	provision
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SECTION B: PRODUCT UNDER INVESTIGATION

B1. Product Information

1.1. The product being investigated (hereinafter referred to as the "PUI") is [insert detailed description of the product being investigated] currently classified under SACU Customs Tariff Schedule No. [insert code(s)].

The like product is a product manufactured by the SACU industry which is identical, i.e. alike in all respects to the PUI, or a product which, although not alike in all respects, has characteristics closely resembling those of the IP. In order to determine whether the product manufactured by the SACU industry has characteristics closely resembling those of the PUI, the Commission will, among others, examine, information on the following factors:

- 1.1.1 product name;
- 1.1.2 technical characteristics and physical appearance;
- 1.1.3 the main raw materials/components/inputs used in the production;
- 1.1.4 production process;
- 1.1.5 the application and end-use of the products;
- 1.1.6 tariff classification
- 1.1.7 any other factor proven to the satisfaction of the Commission to be relevant.

B2. Comparison of export and SACU products

- 2.1. Kindly comment on the comparability of the PUI and the SACU like product. Identify any differences in the technical and physical characteristics, or any other factor outlined in paragraph 1 above. The requested information is necessary to define and distinguish the different types of the PUI produced and/or sold by your company and related companies. Kindly insert your comments in the table in **Annexure B-1**.
- 2.2. Provide the names and addresses of other manufacturers/ producers in your country of the PUI.
- 2.3. Provide the names and addresses of other exporters in your country of the PUI.

SECTION C: 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.

- C1 If known give the names, physical and postal addresses, telephone and fax numbers, and email addresses of the
- (a) producers of the subject products exported to SACU;
 - (b) exporters to SACU; and
 - (c) SACU importers.

SECTION D: SERIOUS INJURY

Note: Before the Commission can initiate a safeguards 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 producers 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 9.1 "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:

- (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.

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.

E1 GENERAL INFORMATION

- E1.1 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.
- E1.2 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 E1.2**.
- E1.3 Give the reasons and basis for your categorisation of customers.
- E1.4 Indicate and give a brief detail of major changes over the past three years in your answers to the above questions.

E2 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.

- E2.1 Indicate your normal accounting period.
- E2.2 Indicate and provide short description of your accounting system, including a flow of transactions from placing an order to delivery.
- E2.3 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.)
- E2.4 Provide copies of your monthly management accounts for the last year of the POI. Provide ancillary schedules if not part of published accounts.
- E2.5 Provide a separate sales and profit (before tax) contribution analysis for the most recent three financial years 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.**

E3 IMPORTS

Note: Your attention is drawn to the requirements posed in the SGR:

SGR - 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.

SGR - Safeguards 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.

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.

E3.1 Annual import statistics

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

	20xx	20xx	20xx
Volume			
Value			
Average unit price			

E3.1.2 Monthly import statistics

Attach as Annexure E3.2 a table indicating, the monthly volumes, values and unit prices of imports for the last 18 consecutive months.

E3.3 Own imports

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

	20xx	20xx	20xx
Volume			
Value			
Average unit price			

State your reasons for importing the subject product.

E4 Cost and price build-up

E4.1 Please supply a cost build-up in the format indicated in **Annexure E4.1**. 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 POI.

E4.2 Indicate the production volume on which the cost and price build-ups are based.

E4.3 Have any cost items provided in the cost and price build up been allocated? If so provide a detailed breakdown of the basis of allocation in each case that an allocation has been made.

E4.4 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 E4.4

E5 SACU INDUSTRY SALES AND MARKET SHARE

E5.1 Please supply the following information on your sales volume in SACU. State the unit of measurement.

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

E5.2 Attach as Annexure E5.2 a table indicating, the quarterly volumes of imports for the last six consecutive quarters of the POI.

E5.3 Indicate how the information in paragraphs E5.1 and E5.2 supports your allegation of serious injury.

Gross profit margin (%)			
Gross profit per unit			
Units sold			
Total gross profit			
Net profit margin (%)			
Net profit per unit			
Net gross profit			

E5.4 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.

E6 Profit/loss

E6.1 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):

E6.2 Comment on the changes in profits.

E7 Output

E7.1 Supply the following information regarding your actual production volumes for the POI:

	20xx	20xx	20xx
Total production of the product concerned			
Production for SACU consumption			
Other SACU producers' production for SACU consumption			

E7.2 Comment on the changes in production, both total and for SACU consumption.

E8 Employment and productivity

E8.1 Provide the following information regarding employment and productivity:

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

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

E9 Capacity and capacity utilisation

E9.1 Supply the information requested below regarding capacity and capacity utilisation for the product concerned. State the unit of measurement.

	20xx	20xx	20xx
capacity (units)			
Actual production			
Capacity utilisation %			
Rest of SACU capacity			
Rest of SACU production			
Rest of SACU capacity utilisation %			

E9.2 State the normal number of shifts per week, number of hours per shift and number of labour units involved, for each –

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

E9.3 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.

E10 Other injury information

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

SECTION F: THREAT OF SERIOUS INJURY

Note: It is not necessary to complete this section if you can prove actual current serious injury.

Note: Any allegation of threat of serious injury should be based on concrete evidence and not only mere conjecture or remote possibility. Information provided on threat should be sufficient to clearly indicate that serious injury is clearly imminent

- F1 Give details on the freely disposable capacity or imminent substantial increase in capacity of the exporter/s. Substantiate your reply.
- F2 Substantiate any significant increase of imports into the SACU market indicating the likelihood of substantially increased importation.
- F3 State whether the demand for imports of the product concerned is likely to further increase. Substantiate your reply.
- F4 Give any other information relevant to your allegation that the infliction of serious injury is imminent.

SECTION G: CAUSE OF SERIOUS INJURY

Note: In order to justify a safeguards action the Commission must be satisfied that serious injury is caused by the increase in imports. **SGR** - provides as follows:

“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.”

SGR - provides that “The injury caused by other factors shall not be attributed to the increased imports.”

- G 1 Give the reasons for your belief that the imports are the cause of the alleged serious injury or threat thereof.
- G 2 Indicate the view that your clients have regarding:
 - (a) the quality of your product;
 - (b) your delivery times;
 - (c) your service; and
 - (d) your after sales service, including guarantees and warranties and technical training to customers.

Please elaborate on all of the above issues.

- G 3 Indicate the state of your workforce and its attitude towards the company, indicating *inter alia* how wage negotiations are conducted.
- G 4 Have you had any strikes, go-slows or lock-outs during the past twelve calendar months? Please elaborate.
- G 5 Has there been a contraction in demand for your product or has there been a change in consumption patterns? Please elaborate.
- G 6 Indicate the technology developments that have taken place since you last updated your manufacturing process.
- G 7 Comment on your productivity vis-à-vis that of the exporters.
- G 8 Any other relevant factor

SECTION I: RELIEF SOUGHT

Indicate the relief sought (safeguards measure) clearly indicating how it was determined, with all substantiating evidence included.

This may be based on price undercutting, price disadvantage or any relevant factor as the Commission may consider.

SECTION J: GENERAL

- (a) Indicate efforts taken or planned to compete with the imports.
- (b) Should the Commission initiate an investigation, the industry will be required to submit a plan not later than 60 days after initiation of the investigation, indicating how it will adjust to increase its competitiveness.
- (c) Provide any other evidence you wish to bring to the attention of the Commission.

CERTIFICATION

The undersigned certifies that all information herein supplied in response to the questionnaire is complete and correct to the best of his knowledge and belief and understands that the information submitted may be subject to audit and verification by the Botswana Trade Commission. The undersigned has been authorised to represent (company name).

Date

Signature of authorised person

Name and title of authorised person (in print)

ANNEXURE A-2

LETTER OF AUTHORISATION

Type the following letter on your company letterhead

To whom it may concern

We the undersigned, hereby authorise _____ to act on our behalf in all manners relating to this application, including signing all documents and being the point of contact.

Any and all acts carried out by the agent/representative on our behalf shall have the same effect as acts of our own.

Further details of the agent/representative are provided below:

Name:

Address:

Telephone No:

Fax No:

E-mail address:

This authorisation is valid for the entirety of the application and investigation process or until further notice from (company name), whichever occurs first.

Yours sincerely

(Duly authorised person)
(Name and Title)

	Product 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 *			
2. FIXED OVERHEAD COST: Indirect 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:			

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)			

Cost and price build-up (all products)

- supply a full bill of material, indicating the cost of each raw material and component

* - Provide a detailed breakdown of the basis of allocation.

Indicate the production volume on which the above cost and price build-ups are based

DONE this day of , 2024.

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HON. KGAFELA MMUSI,
Minister of Trade and Industry.