

REPUBLIC OF SOUTH AFRICA

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**BOARD ON TARIFFS AND TRADE  
AMENDMENT BILL**

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*(As introduced)*

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(MINISTER OF TRADE AND INDUSTRY)

[B 106—96]

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REPUBLIEK VAN SUID-AFRIKA

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**WYSIGINGSWETSONTWERP OP  
DIE RAAD OP TARIEWE EN  
HANDEL**

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*(Soos ingedien)*

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(MINISTER VAN HANDEL EN NYWERHEID)

[W 106—96]

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**GENERAL EXPLANATORY NOTE:**

- [                    ]    Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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## **BILL**

**To amend the Board on Tariffs and Trade Act, 1986, so as to substitute the definition of “disruptive competition”; and to extend the power of the Minister to make regulations; to amend the Customs and Excise Act, 1964, so as to make provision for the institution of provisional safeguard measures; and to provide for matters connected therewith.**

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**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 107 of 1986, as amended by section 1 of Act 60 of 1992 and section 1 of Act 39 of 1995**

1. Section 1 of the Board on Tariffs and Trade Act, 1986 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “disruptive competition” of the following definition: 5

“ ‘disruptive competition’ means the export of goods to the Republic or the common customs area of the Southern African Customs Union in such increased quantities, absolute or relative to domestic production in the Republic or the common customs area of the Southern African Customs Union, and under conditions as to cause or threaten to cause serious injury to the domestic industry in the Republic or the common customs area of the Southern African Customs Union which produces like or directly competitive products;” 10

**Amendment of section 16A of Act 107 of 1986, as inserted by section 5 of Act 60 of 1992** 15

2. Section 16A of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) procedures, guidelines and methodology in connection with any function of the Board; and” 20

**Amendment of Act**

3. The Act mentioned in the Schedule is hereby amended to the extent specified in the Schedule.

**Short title**

4. This Act shall be called the Board on Tariffs and Trade Amendment Act, 1997. 5

## SCHEDULE

## AMENDMENT OF CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 91 OF 1964)

1. Amendment of section 55 by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) Any such anti-dumping, [**duty or**] countervailing or safeguard duty may be imposed in respect of the goods concerned in accordance with such request with effect from the date on which any provisional payment in relation to anti-dumping, [**or**] countervailing or safeguard duty is imposed in respect of those goods under section 57A.”.

2. Amendment of section 57A—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Whenever the Board on Tariffs and Trade publishes a notice in the *Gazette* to the effect that it is investigating the imposition of an anti-dumping, [**duty or a**] countervailing or safeguard duty on goods imported from a supplier or originating in a territory specified in that notice, the Commissioner shall, in accordance with any request by the said Board, by notice in the *Gazette* impose a provisional payment in respect of those goods for such period and for such amount as the Board may specify in such request.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) Such provisional payment shall be paid on goods subject thereto, at the time of entry for home consumption thereof, as security for any anti-dumping, [**or**] countervailing or safeguard duty which may be retrospectively imposed on such goods under section 56, [**or**] 56A or 57 and may be set off against the amount of the retrospective anti-dumping, [**or**] countervailing or safeguard duty payable.”;

(c) by the substitution for subsection (4) of the following subsection:

“If no anti-dumping, [**or**] countervailing or safeguard duty is imposed before expiry of the period for which a provisional payment in relation to the goods concerned has been imposed, the amount of such payment shall be refunded.”; and

(d) by the substitution for subsection (5) of the following subsection:

“(5) If the amount of any such provisional payment on the said goods—

(a) exceeds the amount of any anti-dumping, [**or**] countervailing or safeguard duty retrospectively imposed on such goods under section 56, [**or**] 56A or 57, the amount of the difference shall be refunded; or

(b) is less than the amount of the anti-dumping, [**or**] countervailing or safeguard duty so imposed, the amount of the difference shall not be collected.”.

**MEMORANDUM ON THE OBJECTS OF THE BOARD ON TARIFFS  
AND TRADE AMENDMENT BILL, 1996**

The proposed amendments to the Board on Tariffs and Trade Act, 1986 (Act No. 107 of 1986) will bring the definition of “disruptive competition” into line with requirements of the World Trade Organisation (WTO) as set out in the Agreement on Safeguards.

The present definition is inconsistent with the Agreement on Safeguards, in three main respects:

- (a) the Agreement on Safeguards does not make provision for a duty to be imposed in respect of “proposed exports”, which is included in the current definition of “disruptive competition”.
- (b) the threshold standard for the imposition of a duty in the Agreement on Safeguards is “serious” injury, while the current definition refers to “material” injury, which is considered to be a lesser standard;
- (c) the current definition would permit the imposition of safeguard duties in circumstances where the exports “may retard the establishment of industries”, which is not a circumstance permitted in terms of the Agreement on Safeguards.

Any duty imposed in terms of the current definition would place South Africa in direct contravention of its WTO obligations.

The proposed amendments, together with the development and publication of administrative procedures, would allow the Department of Trade and Industry and the Board on Tariffs and Trade (BTT) to make available to Southern African Customs Union (SACU) industries a remedy permitted by the WTO, in those very specific circumstances set out in the Agreement on Safeguards, and only under those conditions when an industry is suffering or under threat of serious injury as a result of a surge of imports, in accordance with administrative procedures developed and published by the BTT.

It is proposed that section 16A of the principal Act (enabling the Minister to make regulations) be extended so as to allow for the promulgation of regulations in order to comply with South Africa’s obligations in terms of the WTO with respect to dumping, subsidised exports and disruptive competition. (Clause 2 of the Bill).

The amendments proposed to the Customs and Excise Act, 1964, would provide a mechanism for the institution of provisional safeguard measures, which is permissible in terms of the Agreement on Safeguards.

Article 6 of the Agreement on Safeguards provides:

“In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry ....”

At present, Chapter VI of the Customs and Excise Act, 1964, does not provide for provisional safeguard measures to be instituted, although there is provision for the institution of provisional anti-dumping and countervailing measures, which can be instituted by the Commissioner for Customs and Excise at the request of the BTT. This means that South Africa does not have the legislative mechanism to enable SACU industries to benefit from Article 6, in the critical circumstances referred to. The proposed amendments would remedy this situation and provide a legal mechanism for the use of the provisional remedy, in the circumstances permitted by the Agreement on Safeguards, and in accordance with the administrative procedure of the BTT currently being developed.