

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 75 OF 2006

(S.I. No. 75) The Control of Goods (Safeguard Measures) Regulation, 2006

The Control of Goods Act
(Laws, Volume 23, Cap. 421)

IN EXERCISE of the powers contained in section four W of the Control of Goods Act, the following Regulations are hereby made:

PART I PRELIMINARY

1. These Regulations may be cited as the Control of Goods (Safeguard Measures) Regulations, 2006.

2. In these Regulations, unless the context otherwise requires-

“Act” means the Control of Goods Act;

“Advisory committee” means the Advisory Committee constituted under section four G of the Act;

“interested party” means-

(a) exporters and foreign producers of the investigated product;

(b) importers of the investigated product;

(c) trade or business associations whose membership is composed of producers, exporters or importers of the investigated product;

(d) the Government of the exporting countries of the investigated product;

(e) domestic producers;

(f) trade and business associations whose majority membership are producers;

(g) labour unions or other similar organizations representing the interests of workers in the domestic industry;

(h) consumers association; and

(i) any other person whom the Minister determines to have sufficient interest in the outcome of a safeguard investigation;

“investigated product” means the imported product subject to a safeguard investigations under the Act;

“Investigations Committee” means those interested parties that indicate their intention to participate in a safeguard investigation under PART III of the Act;

“safeguard investigation” means an investigation into whether increased imports of the investigated product have caused serious injury to the domestic industry;

“safeguard measure” means the temporary imposition of customs tariffs or quantitative restrictions or a combination thereof, in response to an affirmative determination in a safeguard investigation to prevent or remedy serious injury to the domestic industry.

PART II APPLICATION FOR SAFEGUARD MEASURES

3. (1) An application for a safeguard investigation or an investigation into whether increased imports of the investigated product threaten to cause serious injury to the domestic product shall be made in Form SM1, set out in the Schedule.

(2) The Minister may require the applicant to provide such additional information relating to the application as the Minister may consider necessary to enable the Minister determine whether or not a safeguard investigations should be conducted.

4. (1) The notice to cause a safeguard investigation which is given by the Minister in accordance with the provisions of section Four E of the Act shall include the following information:

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

(b) a complete description of the domestic like directly competitive products, including their technical characteristics and uses;

(c) the names of the requesting enterprises, if any and of all other known producers of the domestic like or directly competitive products;

(d) the country or countries of origin of the investigated product;

(e) a summary of the information on which the request for safeguards measures is based;

(f) the name, address and telephone number of the contact person of the Investigations

Committee;

(g) a statement that the date of the initiation of a safeguard investigation is the date of publication of the notice regarding the investigation;

(h) the proposed schedule for the investigation including:

(i) the date by which interested parties desiring to participate in the investigation must so inform the Investigations Committee, in writing;

(ii) where the imposition of a provisional measure is to be considered, the schedule for and deadlines pertaining to the preliminary phase of the investigation including the dates by which any written argument or other submission must be submitted to the Committee; and

(iii) the date by which a hearing may be held.

(2) Where the Minister decides not to initiate a safeguard investigations, the notice regarding the decision not to initiate the investigation shall contain-

(a) the identity of the requesting enterprises and the domestic products in respect of which a safeguard investigation was requested;

(b) an identification of the imported product; and

(c) the reasons for not initiating an investigation.

(3) Any notice to be given under these Regulations for purposes of a safeguard investigation shall be given in accordance with the provisions of section four E of the Act:

Provided that where the Investigation Committee considers it appropriate, notice may be given to a participating interested party through the diplomatic mission of the interested party concerned.

PART III IMLEMENTATION OF SAFEGUARD MEASURES

5. (1) A safeguard measure may be applied to an investigative product only if the decision to impose the safeguard measure has been determined, pursuant to an investigation carried out in accordance with the Act and these Regulations.

(2) Where a decision to impose a safeguard measure is made in accordance with section Four M, Four N or Four O of the Act, the provisional or definitive safeguard measure, as the case may be, shall apply to imported goods for which a customs declaration for final clearance has been made.

(3) For the avoidance of doubt, the Customs Division may clear goods that are subject to a safeguard investigation during the period when the safeguard investigation is being conducted.

PART IV PROCEDURES OF INVESTIGATIONS COMMITTEE

6. (1) The Investigations Committee shall sit at such places and times as the Chairperson shall determine.

(2) The Chairperson or the Vice-Chairperson shall preside over the sitting of the Committee.

(3) The Committee when considering any matter shall be duly constituted if it consists of five members which number shall include the Chairperson or the Vice-Chairperson.

7. A member of the Investigations Committee shall not sit at a meeting or hearing of the Committee if the member has any interest, direct or indirect, personal or pecuniary in any application or matter before the Committee.

8. The determination of any matter before the Investigations Committee shall be according to the opinion of the majority of the members considering the matter and the person presiding shall have a casting vote.

9. At any hearing relating to a safeguard investigation, every participating interested party shall have the right to appear in person or to be represented by a legal practitioner or a representative of the participating interested party's choice and to give evidence before the Committee and may, if that party so chooses, submit written evidence to the Committee.

10. The Investigations Committee may, for purposes of verifying information received by the Committee during a safeguard investigation, undertake such site visits to places within and outside Zambia as the Committee may consider necessary:

Provided that where the Committee considers that the prior approval of any participating interested party is required before a site visit is undertaken, the Committee shall obtain the necessary approval before undertaking the site visit.

11. (1) The decision of the Investigations Committee shall be rendered in the report of the Committee and shall contain the Committee's recommendations and the reasons for the recommendations.

(2) The report of the Committee referred to in sub-regulation (1) shall be submitted to the advisory Committee-

(a) within fourteen days of the completion of the safeguard investigation; or

(b) where a hearing is conducted as part of a safeguard investigation, within fourteen days of the completion of the hearing.

12. Subject to section four J of the Act, the Investigations Committee shall keep a register, in respect of every safeguard investigation and hearing, containing the following information:

(a) all notices issued in relation to a safeguard investigation;

(b) all determinations made by the Investigations Committee in respect of a safeguard investigation;

(c) all information, other than confidential information, gathered by the Committee during a safeguard investigation;

(d) the record of proceedings of every hearing conducted as part of safeguard investigation; and

(e) details of such other documentation that the Committee considers to be pertinent to the safeguard investigation.

13. The register referred to in regulation 12 shall be kept at the office of the Minister or such other place as the Minister may determine and shall be made available for inspection by the public during normal hours of official business.

SCHEDULE

(Regulation 3)

The Control of Goods Act – Cap 421

The Control of Goods (Safeguard Measures) Regulations 2006

APPLICATION FOR THE IMPOSITION OF A SAFEGUARD MEASURE

APPLICATION FORM

1. REQUEST FOR SAFEGUARD INVESTIGATION

I/We request the Ministry to initiate Safeguard Investigations pursuant to the following International Agreement and the Control of Goods Act:

(a) COMESA Article 61

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- (b) SADC Trade Article 20 -
- (c) WTO Safeguard Agreement -
- (d) WTO Protocol on Accession (China) -

2. IDENTIFICATION OF THE APPLICANT

- (a) Name: _____
- (b) Postal Address: _____

- (c) Physical Address: _____

- (d) Telephone No: _____
- (e) Fax: _____
- (f) E-mail Address: _____

2.1 (b) Name (s) of the applicant's authorized officer or legal representative for purposes of the safeguard investigation.

- (a) Name: _____
- (b) Designation _____
- (c) Postal Address: _____
- (d) Physical Address: _____
- (e) Telephone No: _____
- (f) Fax No: _____

a. Mention your accounting year (e.g. July 2001 – June 2004)

(Please attach the balance sheets of the last three years and the list of directors)

2. IDENTIFICATION OF DOMESTIC INDUSTRY

3.1 List details of all domestic producers (including the applicant) of the like product in the table below:

Table 1

DOMESTIC PRODUCERS OF THE LIKE PRODUCT

No.	Name	Te l	Fa x	Authorise d Officer	Quantity Of the Like Product (During Last 1 year)	Sales Valu e In K (000)	Share In Domestic Productio n	Supporting/Oposi ng The Application
					Produce d sold		Quan % tity age	

*Note:

“domestic industry” means

(a) the producers as a whole of a product within the Republic which are like or directly competitive with the investigated product; or

(b) producers operating within the Republic whose Collective output of products which are like or directly competitive with the investigated product constitute a major proportion of local domestic production of those products.

“domestic producers” means

Producers, operating within the Republic of the like or directly competitive products to the investigated product.

3.2 Provide details of an industrial association (if any) including producers of the domestic like product.

3.3 Describe any known relationship the interested party (s) to this application may have with the foreign exporter or producer, or with a Zambian importer of the product under consideration.

4. IDENTIFICATION OF PROJECT

The investigation can be initiated only if the domestic industry is producing a product, which is a like product, or directly competitive product to the imported product.

“Like product” means

A product which is alike all respects to the investigated product or, in the absence of such a product, a directly competitive products, although not alike in all respects, has characteristics closely resembling those of the investigative product.

Using the factors listed below, describe both the domestic product as well as the investigated product in sufficient detail for proper comparison and understanding of the products.

4.1 Domestic Product

(a) Complete description of the product

(b) HS Code _____

(c) Details of taxes (VAT, Excise Duty etc..) applicable to imported product

(d) Specific grade/type/model

(e) Major uses

(f) Is the imported product exactly the same as the domestic product?

(g) If there are any further comments on the information given above that will assist the Investigations Committee understand the nature of the imported product and the difference between the imported product and the domestic like product? If so state them below:

4.2 Details of Imported Product

(a) Complete description of the product

(b) HS Code

(c) Details of import taxes (Customs Duty/VAT, Excise Duty. etc)

(d) Specific grade/type/model

(e) Major uses

4.3 Are there any major differences between the product complained against and any other product imported from different sources? If so, describe the differences in detail.

7. INFORMATION ON IMPORTS

7.1 The information on imports is required to be submitted for the three most recently fiscal year preceding the request and any more recent partial data by country or origin. Such information should be provided in the format give in Annex 1. The country-wise analysis of this information should be provided in Annex II.

7.2 Please provide data on imports to domestic production of like product in Annex III.

8. DETERMINATION OF SERIOUS INJURY, THREAT OF SERIOUS INJURY, SERIOUS DISTURBANCE OR MARKET DISRUPTION

8.1 For the determination of serious injury, threat of serious injury, serious disturbance or market disruption to the domestic industry a number of factors need to be assessed, which include volume of domestic production, its market share, cost to production for the domestic product etc. Give details of the serious injury or threat of serious injury in the table below.

Table IV

MARKET SHARE OF THE DOMESTIC INDUSTRY

Total Domestic Production	Total imports Market of Production	Share Increase	/(Decrease) in Market Share Domestic Production
Domestic		Imports	

8.2 Provide detailed comments on increase/decrease in market share of domestic industry specially how it can be attributed to increase in imports either in absolute terms or relative to domestic production.

8.3 Cost of production and sell price

Give details of cost production of domestic product and sell price in the table below:

Table v

COST OF PRODUCTION AND SELL PRICE

	Current Year	Last Year	The year	Before Last*
	Raw material cost net of inventory			
	Adjustment			
	Packing material cost			
	Manufacturing salaries and wages			
	Manufacturing overheads			
	Stores, spares/supplies			
	Electricity			
	Gas/fuel Gas/fuel			
	Repair and maintenance			
	Depreciation			
	Misc/other expenses			
	Inventory adjustment of semi finished goods			
	Less Income of by-products			
	a) Cost of goods manufactured (1 to 6)			
	b) Quantity of goods adjusted (Tonne. Lit no. etc)			
	a) Manufacturing cost of goods sold (7 + or -8)			
	b) Quantity of goods adjusted (Tonne. Lit no. etc)			
	Administrative expenses			
	Selling and distribution expenses			
	Financial expenses			
	Less other income (indicate nature)			
	Cost to make and sell (9 to 13)			
	Profit/(loss) 16 – 4			
	Exfactory sales (net of			

	discount/commission) excluding taxes/ (duties			
	VAT (applicable Percentage			
	Excise duty (applicable percentage)			
	Exfactory sales including taxes/duties (16 to 18)			
	Wholesalers profit/commission			
	Any form of direct taxes (presumptive, withholding tax etc)			
	Wholesales price including all taxes			
	Retails profit/commission			
	Retail price including all taxes			

Note: Information should be provided as per the report of audited accounts. If the applicant is producing more than one product, the information above should be provided separately for each like product.

8.4 Provide the changes in capacity utilization of domestic industry over the last three years in the table below:

Table VI

CAPACITY UTILISATION OF THE DOMESTIC INDUSTRY

	Year ____	Year ____	Year ____	Current year ____
Installed capacity				
Domestic production				
Total domestic demand				

8.5 Please indicate changes in production and sales of the domestic industry in the table below:

Table VII

PRODUCTION AND SALES OF LIKE PRODUCT BY THE DOMESTIC INDUSTRY

	Domestic Quantity	Production	Sales of the		
			Value	Increase	(decrease)
Quantity					

Year ____	Quarter I				
	Quarter II				
	Quarter III				
	Quarter IV				
	Quarter I				
Year ____	Quarter I				
	Quarter II				
	Quarter III				
	Quarter IV				
Year ____	Quarter I				
	Quarter II				
	Quarter III				
	Quarter IV				
Current Year ____	Quarter I				
	Quarter II				
	Quarter III				
	Quarter IV				

8.6 The status of the profits and losses of industry should be provided in the following table:

Table VIII

(a) PROFIT AND LOSS

	Profit/ (Loss)	
	Total	Per Unit
Year ____		
Year ____		
Year ____		
Current Year ____		

8.7 Please describe the condition of the domestic industry, referring to profits, sales, production, capacity utilization, employment or any other objective measures of IS condition. Describe changes in the relevant indicators over the three most recent fiscal years, with special reference to the situation before and after the start of the alleged serious injury, serious disturbance or market disruption.

(b) INDUSTRIAL INDICATIONS

Please provide quantitative indicators in the table below:

Table IX

No.	Particulars	Year ___	Year __	Year ___	Current Year ___
1.	Price per unit of imported product				
2.	Volume of import				
3.	Price per unit product				
4.	Domestic sales of like product of domestic industry				
5.	Employment in domestic industry				
6.	Market share of domestic industry versus import				

8.8 Please provide information on employment levels in the industry in the table below:

Table X

EMPLOYMENT POSITION

		Number of Employees		
Unskilled		Skilled	Managerial	
Year ___				
	Quarter I			
	Quarter II			
	Quarter III			
	Quarter IV			
Year ___				
	Quarter I			
	Quarter II			
	Quarter III			
	Quarter IV			
Year ___				
	Quarter I			
	Quarter II			
	Quarter III			
	Quarter IV			
Current year ___				

11. UNFORSEEN DEVELOPMENT

(To be completed by applications made pursuant to WTO safeguards Agreement)

11.1 The law also requires that the increase in imports should be a result of unforeseen developments. Please comment on these aspects with the help of data and evidence.

12. RELIEF REQUESTED

12.1 Please describe the safeguard measure requested including the type (tariff or Quota), proposed quantum of tariff and proposed duration. If the period requested is longer than one year, please provide information regarding the progressive liberation of the safeguard measure.

13. ADJUSTMENT PLAN

13.1 Please explain the steps to be taken by the domestic industry during the period in which any safeguard measure may be imposed. (Note: A plan for adjusting the domestic industry to competition from imports that will follow at the end of the relief period must be submitted by the end of the safeguard investigations, if conducted such a plan should refer to any policy of the republic to facilitate adjustment).

14. PROVISIONAL SAFEGUARD MEASURE

14.1 Please state if you are requesting that a provisional safeguard measure be put in place.

14.2 If a provisional safeguard measure is requested, please provide information regarding critical circumstances, i.e. explain how any delay in taking action may cause serious injury/disturbance to the domestic industry that may be difficult to repair.

14.3 Please indicate the proposed level of tariff increase as a provisional measure.

ANNEX 1

IMPORT TREND OF THE INVESTIGATED PRODUCT

Qty: Units/Nos. etc Value: Kwacha

Period	Quarter I		Quarter II		Quarter III		Quarter IV		Total	Total
Year__										
Name of Country	Qty	Value	Qty	Value	Qty	Value	Qty	Val	Qty	Val

2000-01												
2001-02												
Current Year												

Source:

COMPARISON OF DOMESTIC LIKE PRODUCT AND IMPORTED PRODUCT

		Total Imports (Qty)	Domestic Production (Qty)	Imports as percent domestic Production	Increase in imports over previous quarter	
Period					Absolute	Relative to Domestic Production
Year _____	Quarter I					
	Quarter II					
	Quarter III					
	Quarter IV					
Year _____	Quarter I					
	Quarter II					
	Quarter III					
	Quarter IV					
Year _____	Quarter I					
	Quarter II					
	Quarter III					
	Quarter IV					
Current Year _____	Quarter I					
	Quarter II					
	Quarter III					
	Quarter IV					

Source:

DECLARATION

I/we hereby request that the Minister to initiate an investigation in accordance with the Control of Goods Act CAP 421, as amended by Act No. 12 of 2004, Customs and Excise Act as amended by Act No. 11 of 2004 and the accompanying Regulations, in respect of the product identified at paragraph 3 of this application form for the imposition of appropriate safeguard measure (s).

The evidence submitted includes all that is available to me/us in relation to the information referred to in the relevant Acts and Regulations cited above Control of Goods Act.

This application is submitted by or on behalf of the domestic industry.

I/we believe that the information contained in this application is adequate and accurate to the best of my/our knowledge and belief. I understand that any omission or misinformation concerning my application accordance with the relevant International agreement and laws of Zambia may invalidate my application or result in its rejection.

Signature: _____

Applicant name
(s): _____

Title/Position: _____

Address
(es): _____

Date: _____

Notes:

1. The form should be completed in full and where space is inadequate, attachments should be made. The applicant is required to submit the application form in duplicate to the Minister of Commerce, Trade and Industry.

2. Any confidential information should be clearly marked “CONFIDENTIAL”.
3. The completed application is required to be submitted to:

The Permanent Secretary
The Ministry of Commerce, Trade and Industry
P.O. Box 31968
LUSAKA

4. The application form should be accompanied by a letter addressed to the Permanent Secretary of the Ministry of Commerce, Trade and Industry, describing the desired action.

SCHEDULE

(Paragraph) 2)

Office	Area	Holder of Office
Chieftainess Mungule of the Lenje people of Chibombo District in the Central Province	Mwembeshi and Mbwera	Miliam Nkokoma

Supplement to the Republic of Zambia Government
Gazette dated Friday, 14th July, 2006