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To: The Minister of Trade and Industry
The Honorable Dr Rob Davies
c/o Mr. Ntutuzelo Vananda
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PRETORIA
Per email: nvananda@thedti.gov.za

27 June 2012

Dear Sir

RE: NOTICE 379 OF 2012 IN GOVERNMENT GAZETTE NO 35328 – LABELLING OF PRODUCTS ORIGINATING FROM OCCUPIED PALESTINIAN TERRITORY IN TERMS OF SECTION 24 OF THE CONSUMER PROTECTION ACT, 68 OF 2008 ("the Act")

1. INTRODUCTION

1.1. We refer to the abovementioned notice ("the Notice") published in the Government Gazette on 1 May 2012. The SAJBD ("the Board") wishes to provide its comments on the Notice, pursuant to the invitation contained in the final paragraph thereof.

1.2. It is the view of the Board that the Notice does not pass Constitutional muster in various respects and will fall to be set aside if promulgated. In this submission, we will address various shortcomings of the Notice in an effort to persuade you to reconsider the promulgation of the Notice issued by yourself in your capacity as Minister of Trade and Industry.

1.3. These submissions, however, must not be regarded as an exhaustive exposition of the legal challenges available to the Board in relation to the Notice, and are made with full reservation of the rights of the Board to initiate proceedings to set aside the Notice, if promulgated.

2. FIRST SUBMISSION: EXERCISE OF MINISTERIAL POWER IN ISSUING THE NOTICE, IN CONFLICT WITH CONSTITUTIONAL RESTRAINTS

2.1. It is readily apparent, from the Minister's own Parliamentary press briefing, that the Notice was issued by him without the prior concurrence of the Cabinet of the South Africa Government. The exercise of executive authority of this type is not routine in nature, and involves matter of substance, with potentially inflammatory consequences not only for SA society, but also for SA's standing in the international community. In the result, it was incumbent upon the Minister to engage with Cabinet before releasing the Notice for comment. The Minister's

seeking of public comment after the event, does not cure the contravention of the constitutional restraints imposed upon him.

2.2. In terms of the Manual on Executive Acts of the President ("the Manual"), this matter should have been referred to Cabinet for its consideration and decision, before the promulgation of the Notice. As stipulated in the Manual, the validity of the Minister's decision to publish the Notice may be called into question.

2.3. Media reports record promises made by the Minister to the Open Shuhada Street Organisation ("OSS") in 2010 that he would take action, utilising his power to issue a notice where something is proven to be unlawfully labelled. The publication of the Notice is the manifestation of this promise to OSS.

2.4. It is a matter of record that the Minister has been predisposed to accept the validity of claims made by spokespersons for the Palestinian cause, even before hearing representations from other parties. With specific reference to this Notice, he is on record, as early as September 2011, as stating

"I am waiting for a formal submission and I will apply my mind and decide on the recommendations. We're persuaded it's in the interest of South African consumers to know whether their products are coming from Israel or from the occupied territories."

2.5. The Board is highly perturbed that the Minister could have been so persuaded without even having sought or received any submissions whatsoever to ground such a conclusion. We address this in other sections of this submission.

2.6. Quite aside from the bias publically exhibited by the Minister in regard to the matter, the undertaking given by him to OSS is at the very least in contravention of his constitutional mandate. An undertaking of this nature could never lawfully have been given by an individual Minister, let alone without Cabinet authority and without having regard to the Manual. The Minister's constitutional mandate does not entitle him to utilise the statutory machinery created in the Consumer Protection Act to conduct and pursue SA's foreign relations policy. SA's foreign policy is the prerogative of the Executive, led by the President. Despite protestations to the contrary after the release of the Notice, it is evident to us that the Minister is indeed purporting to make decisions regarding SA's foreign policy, utilising a domestic statute.

2.7. More specifically, the Notice must be read in light of the statement released by Parliament's Communications Services on 25 May 2012 ("the Statement"), in relation thereto. In the Statement, reference is made to the fact that the Notice has been issued in pursuance of South Africa's "...strategic trade policy as a responsible member of the international community of nations".

2.8. As to the Minister's denials, to both the Board and the media, that the Notice has "nothing to do with international politics or anything like that", we refer to the penultimate paragraph of the Notice, in which he records that South Africa's

international relations policy is to only recognise "...the State of Israel within the borders demarcated by the United Nations in 1948. Such demarcated borders of Israel by the UN did not include Palestinian Territories occupied after 1967". It is readily apparent that the Consumer Protection Act has been harnessed by the Minister to pursue a particular diplomatic agenda. Questions of recognition, in international law, are highly sensitive, and have wide-ranging effects, and have no place in notices from the Department of Trade and Industry in relation to SA's consumer protection laws. These statements are best left to the body charged with the task of conducting SA's foreign relations – the Department of International Relations and Cooperation – acting collectively with the Cabinet.

2.9. Until such time as Cabinet has considered the Notice, and expressed collective support for its promulgation, the Notice remains susceptible to challenge.

2.10. Given the real effect of the Notice, which is to make an international diplomatic statement regarding an exceptionally complex issue, which continues to evolve and which is the subject of debate in various international fora, the Notice is par excellence a case for strict compliance with the Manual regarding Cabinet consultation and responsibility.

3. SECOND SUBMISSION: EXCLUSIVE RELIANCE ON INFORMATION FROM A SINGLE, UNRELIABLE SOURCE TO MOTIVATE EXECUTIVE ACTION

3.1. There is a lengthy history of Mr Achmat (on behalf of OSS) making reckless and inflammatory allegations against Israel, as well as of seeking (sometimes by openly disruptive tactics) to prevent visiting Israeli speakers from being heard. This history should at the very least have compelled a proper investigation into the assertions and engagement thereon before a decision was taken to trigger a process, which takes as its starting point the veracity of OSS's allegations.

3.2. The process adopted by the Minister, which led to the issuing of the Notice, is substantively unfair, having self-evidently been triggered by allegations made by an avowedly pro-Palestinian organisation, without any verification thereof by him. On the contrary, he already reached the conclusion of the necessity to issue a notice even before receiving the submission from OSS.

3.3. At the very least, fairness required the Minister to initiate a verification process in order to determine the correctness of the allegations made without simply accepting the correctness of the claims of the OSS and promulgating the Notice on that basis. Such a verification process, would as a minimum have entailed furnishing the Board and other interested and affected parties with a copy of the OSS complaint to allow it to consider same, and to traverse the allegations where necessary.

3.4. The Board was, however, not given such an opportunity, as an interested party, to consider, and where necessary join issue with the demands made by OSS to the Minister, before the decision was taken to promulgate the Notice. This is despite the record showing no fewer than 33 email communications being sent by the

Board to the Minister's offices in the period 21 September 2011 and 4 April 2012, all of which directly concerned attempts by it to set up a meeting with him. On two occasions, dates for a meeting were finally arrived at, only for these to be cancelled by his offices. The Board has not even been furnished with the "formal submission" of OSS. Had the Board been given an opportunity to meaningfully engage with the Minister as part of his consideration process in deciding to publish the Notice for comment, it would have drawn attention, inter alia, to the following facts:

3.4.1. The term "occupied territories" has a specific definition under international law, referring to territories captured from an established and recognised sovereign entity. This forms part of the international agreement known as the Fourth Geneva Convention. For a country to be regarded as "occupied" by an "occupier" both are required to be signatories to the Convention. The Palestinian Authority ("PA"), created by the Oslo Accord, is not a signatory to that Convention. The West Bank and Gaza Strip were controlled by Britain as part of a mandate from the League of Nations from the end of the First World War until 1948. During that mandate, and for centuries prior to that, it is a well-documented historical fact that Jewish settlements existed in Hebron, and that there has in fact been a continual, unbroken Jewish presence in Judea, Samaria and various other areas of what is now known as the West Bank for many centuries prior to the recognition of the state of Israel by the United Nations.

3.4.2. Following Jordan's invasion of these territories in 1948, it controlled those territories until 1967. Jordan as the occupying power did not regard the 1949 armistice line which separated the Israeli forces from the Jordanian forces as the border between Israel and Jordan, but rather regarded it simply as a line of separation.

3.4.3. Prior to Israel taking control of the West Bank and Gaza Strip in 1967, these areas were not under the control of an established sovereign entity called Palestine that exercised internationally recognised sovereign control thereof. At the time of the recognition of the State of Israel by the United Nations, no corresponding sovereign entity was established to take control of the other portion of the partitioned land. Jordan was the occupying force in control of the West Bank until 1967, whereafter Israel's control of that territory commenced. To date, no sovereign entity has been established over that territory.

3.4.4. In terms of international law, the sovereignty of these territories can only be determined through the conclusion of negotiations. Resolution 242 of the United Nations Security Council calls for the *"...establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:*

(i) *Withdrawal of Israel armed forces from territories occupied in the recent conflict;*

(ii) *Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force".*

3.4.5. It is a matter of historical record that Resolution 242 was drafted with deliberateness of choice of language, leaving intentionally vague the identity of territory from which Israeli armed forces would withdraw upon the conclusion of the just and lasting peace foreshadowed in that Resolution. Accordingly, it is incorrect to state, as a matter of international law, that the entire West Bank territory, beyond the armistice line of 1949 constitutes occupied Palestinian territory. No such determination has been made by the United Nations which has left the ultimate determination of respective sovereignty of respective portions of the West Bank to Israel and the PA through negotiations. The United Nations does not recognise Palestine as a sovereign state and accordingly, under international law, it cannot be said that Palestinian sovereignty over that territory is unassailable.

3.4.6. The negotiations foreshadowed by Resolution 242 have received impetus with the conclusion of the Oslo Accords as amplified by the Wye River Memorandum. Those agreements have, with the consent of the representatives of the Palestinian people, have recognised respective spheres of control of the West Bank between Israel and the Palestinian representatives, pending final negotiations.

3.4.7. As we indicated above, the recognition of Palestine as a sovereign state is a vexed question, and remains a matter of intense debate within the international community.

3.5. Yet a further example of a glaring inaccuracy which the Minister has obviously accepted, if regard is had to the media releases surrounding the issuing of the Notice, is OSS's contention that in 2010 the ECJ ruled that products from occupied territories cannot be identified as products of Israel. The ECJ has never issued a binding ruling on this matter, and we do not understand the opinion issued by that body to have expressed such a view.

3.6. A consideration of the ECJ's opinion reveals the following context:

3.6.1. A German company importing drink makers supplied by an Israeli company sought to import goods into Germany, and informed the German customs authorities that the goods to be so imported originated in Israel, and were thus subject to the preferential treatment provided for in the Euro-Mediterranean Association Agreement ("the EMAA");

3.6.2. German customs authorities asked the Israeli customs authorities to confirm that the product had not been manufactured in an "occupied territory", pursuant to the provisions of the EMAA which entitled them to seek clarification regarding the origin of the goods.

3.6.3. Whilst the Israeli customs authorities did confirm that the goods did originate in an area under their responsibility, they did not specifically respond to the question of whether or not the goods were manufactured in the "occupied territories". The German authorities concluded that it could not be conclusively shown that the imported goods fell within the scope of the EMAA.

3.6.4. The ECJ agreed that in the absence of the provision of information by Israeli customs authorities, the German customs authorities were entitled to contend that there was insufficient information before them to hold that the goods were covered by the EMAA.

3.6.5. Nevertheless, the underlying rationale of the opinion of the ECJ was that the authorities of an exporting state are best placed to verify the facts which determine origin, and the customs authorities of the importing states are generally bound by the results of that verification.

3.7. The ECJ opinion is consistent with South Africa's customs laws in relation to countries of origin. Parliament has laid down a very specific process by which the origin of goods is to be determined. The Minister's proposed Notice usurps the powers of the South African customs authorities, regulated by the Ministry of Finance. On this basis alone, the allegations of the OSS could not have been legitimately accepted.

3.8. In the circumstances, if anything, the opinion of the ECJ negates the OSS's contentions, and undercuts the assertion contained in the notice that South Africa is complying with its international law obligations.

3.9. It is readily apparent that even the most cursory review of the accusations made by OSS to motivate the publication of the Notice, reveals fundamental factual flaws. Emotive language does not convert fallacious allegations into fact.

3.10. The Board's representations in this regard are entirely consistent with the attitude expressed by South Africa at the United Nations Security Council meeting, debating the report on the exploitation of resources in the Democratic Republic of Congo, following the invasions of that country by inter alia Uganda and Rwanda. Although the South African government was not directly implicated in the report, South African corporations trading in the DRC were indeed implicated by the United Nations investigation. In response to accusations by the United Nations against SA corporations (as opposed to the South African government), South Africa's ambassador to the United Nations is reported to have stated:

...[that] he was disappointed at the content of the panel's report, the methodology it used to gather its information, and the conclusions and recommendations it submitted. He urged the Council to require the panel to further investigate and substantiate its allegations and recommendations. Indeed, the report contradicted the aims and intentions of the Council which, when establishing subsidiary bodies to follow up its work, must follow clearly established guidelines. Those should include close cooperation and consultations with governments. It was not acceptable, for example, for a panel expert to be given the opportunity to meet with government authorities without sharing information on matters of concern to the governments involved.

He said his Government met several times with the panel, which expected South African authorities to conduct further investigations, and undertake any necessary steps, but with little or no information. A reading of the panel's report showed that it had in its possession much information that could have been of assistance to further investigations. However, the panel chose not to divulge that information, except to use it as supposed evidence in its report. For example, on 14 June his Government was asked by the panel to provide a "list of all South African, and South African registered companies operating in or with the Democratic Republic of the Congo". The South African authorities raised their serious concerns about the panel's queries regarding South African companies operating in the Democratic Republic of the Congo, without any indication as to their participation in the illegal exploitation of that country's natural resources.

Continuing, he said South Africa had underlined the fact that unsubstantiated queries by the panel about the activities of companies operating legally and "above-board" in the Democratic Republic of the Congo could be interpreted as casting unwarranted aspersions on their activities. The report's statements about South Africa, South African companies and South African individuals consequently did not appear to be substantiated by hard evidence. Nor had the panel distinguished between legal and illegal activities of companies in its report. Hopefully, the Council would take those concerns into account in its consideration of that report and of any new mandate given to the panel.

He asked the Council to provide clear and specific guidelines on the functioning, approach and operating standards of any future mechanisms it might decide to establish with regard to the Democratic Republic of the Congo. South Africa regarded that in a serious light, not only because of its imputations, but also because of the role it continued to play in achieving lasting peace, security, stability and prosperity for the Democratic Republic of the Congo and its people.

He said that a sweeping statement in the panel's report, the fundamental premise on which the Lusaka Agreement was based, namely, the security concerns of its parties, was dismissed. That misconception of the peace process raised questions about some of the other conclusions the Council was being asked to endorse."

3.11. Precisely the same approach adopted by the South African government in the abovementioned Security Council session should have been adopted by the

Minister in dealing with what is indisputably a one-sided analysis which plainly must have contained the highly emotive and inflammatory language customarily adopted by OSS in its complaints against Israel, widely reported in the media. The fact that the Minister has adopted an approach entirely inconsistent with that of the South African government in its engagement with the United Nations is strongly indicative of a position which is inconsistent with the values of the Constitution and the obligations imposed on the Executive by the Constitution

3.12. In the circumstances, it is the Board's contention that the decision to issue the Notice for comment without undertaking any verification process and engagement with other interested parties or engagement at a diplomatic level, is entirely inconsistent with the Constitution and SA's clearly stated foreign policy decision re the Israeli-Palestinian dispute.

3.13. As Deputy Minister of International Relations and Cooperation, Ms Sue van der Merwe, stated in December 2008, South Africa's foreign policy is guided by its Bill of Rights and key to this foreign policy is the pursuit of a rules-based international order. As she further stated, in an increasingly conflict-ridden world, the role of international law and the continued affirmation of the legal rights of people and nations through the promotion of multi-lateralism, human rights and democracy, are the tenets of South Africa's policy of securing peace and prosperity at home, on the African continent and the world at large.

3.14. Deputy Minister of International Relations and Cooperation, Ebrahim Ebrahim affirmed in May 2010, SA's position that a long-term solution to the Palestinian issue can only be achieved through negotiation.

3.15. In June 2012 Mr Ebrahim Ebrahim, speaking in the context of the conflict in Syria, further stressed that South Africa's foreign policy when it comes to resolving conflict situations in other parts of the world is to support all negotiated, diplomatic efforts with this aim, to oppose interference by external parties in the internal affairs of the relevant country and to refrain from adopting policies that might undermine progress towards achieving a peaceful, negotiated settlement. As quoted in the Sunday Independent of 10 June 2012, he said:

"Implementation of SA's foreign policy is guided by our country's national interests and values, taking a cue from the lessons we learnt in our own transition from the apartheid regime to a democratic state. Among other things, we are committed to multiculturalism and non-violence...In line with our commitment to multilateralism and non-violence, our position on the conflict in Syria is geared towards supporting diplomatic efforts as led by former UN Secretary General Kofi Annan...Fundamentally, no foreign or external parties should interfere in Syria as they engage in the critical decision-making processes on the future of their country...the international community should render support to the peace process and refrain from actions and statements that may polarise the parties and delay or even paralyse possibilities for a peaceful settlement."

3.16. Accordingly, rather than exacerbate the tensions between Israel and the PA (established by the Oslo Accords) in pursuing negotiations towards a final resolution of the dispute, the Board would have strongly recommended that South Africa embrace its stated international commitment to assisting Israel and the Palestinians to negotiate a lasting peace and ultimately the implementation of Resolution 242 to finally bring to conclusion the determination of sovereignty regarding the area known as the West Bank. The adoption of active steps by SA to bring the two disputing parties together would be in compliance with its foreign policy and in fulfillment of its constitutional compact with its citizens

4. THIRD SUBMISSION: INCONSISTENT, IRRATIONAL AND UNLAWFUL EXERCISE OF EXECUTIVE POWER

4.1. The Constitution requires Government Ministers to act in accordance with it, in exercising their powers and performing their functions. Every decision taken by a Minister is accordingly tested with reference to rationality and legality.

4.2. The Notice issued by the Minister records that "...consumers in South Africa should not be misled into believing that products originating from the OPT are products originating from Israel". No comparable notice has been issued in respect of goods emanating from Northern Cyprus, currently occupied by Turkey, and labelled as products of Turkey and no comparable notice has been issued in respect of goods emanating from Western Sahara, currently occupied by Morocco, and labelled as products of Morocco. Why should South African consumers be permitted to be misled regarding the origin of goods actually emanating from Cyprus and Western Sahara, as being reflected as Turkey and Morocco respectively?

4.3. In this regard, SA is on record as having expressed very strong support for the Saharawi Arab Democratic Republic in Western Sahara, and having expressed very strong opposition to the Moroccan occupation of Western Sahara, regarding it as an "outstanding decolonisation issue". Similarly, SA has not challenged the United Nations demand for the immediate and unconditional withdrawal for Turkish forces occupying Northern Cyprus.

4.4. Currently, South Africa imports goods from Morocco, the value of which is in excess of R110 million per annum. Goods to the value of R 4.1 billion are imported annually from Turkey. South African consumers are not informed as to whether the source of such goods were respectively from occupied Western Sahara or occupied North Cyprus, and are in all likelihood, being misled that goods stated to be manufactured in Morocco and Turkey respectively have their origins in Western Sahara and Northern Cyprus.

4.5. These are not hypothetical examples. A Namibian-South African fishing company holds a licence from the Moroccan government to extract 40 000 tonnes of fish a year from Western Sahara's territorial waters. Despite South Africa's strong support for the self-determination of Western Sahara, it is content to allow its corporations to collaborate economically with Morocco in relation to the trade of goods originating from W Sahara.

4.6. The converse is applicable with regard to Taiwan. South Africa recognises China as having sovereign power over Taiwan, which is reflected on the Department of Trade and Industry's website as being a province of China. This accords with the United Nations position on Taiwan, which sees it as a part of China. Yet, annually, goods in excess of R9 billion are imported into South Africa reflecting the country of origin as Taiwan and not as the People's Republic of China. There can be no question that South African consumers are being misled into believing that Taiwan is a country of origin, when by international standards, and by South Africa's own foreign policy position, it is not.

4.7. The decision to promulgate a notice in respect of products from the OPT and not to introduce the same notices in respect of products emanating from Morocco, Turkey and Taiwan, is irrational, and lacks legality. It appears to the Board that the Minister's proposed exercise of power under the Consumer Protection Act, is vitiated by partiality and inconsistency in relation to South Africa's international relations policy.

5. FOURTH SUBMISSION: NON-COMPLIANCE WITH THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT

5.1. In issuing the Notice, we submit that the Minister acted in excess of the powers given to him under the Act. Should he proceed to issue the Notice, this fact alone will render his conduct susceptible to judicial review. More specifically, the Board contends that:

5.1.1. The Minister has not met the statutory pre-requisites to issue a notice of the type which he proposes to issue;

5.1.2. in proposing to issue the Notice without undertaking any verification process of the complaint by the OSS, which he concedes has been the catalyst for the issuing of the Notice, he has regrettably exhibited a clear bias against the State of Israel, and the views and concerns of an interest group in South Africa in favour of the views of another interest group;

5.1.3. his decision was taken for a reason not authorised by the Act and in our view, for an ulterior purpose or motive;

5.1.4. his decision to issue the Notice failed to take into account relevant considerations, some of which have been listed in the preceding sections of this submission;

5.1.5. his decision to issue the Notice, by his own admission, was taken because of the dictates of another person or body, which was neither authorised nor warranted;

5.1.6. having regard to all of the aforegoing, the Minister's decision to publish the Notice was arbitrary;

5.1.7. the decision to publish the Notice is not rationally connected to the purpose for which it was taken or the purpose of the relevant provisions of the Act;

5.1.8. the Notice is unlawful and unconstitutional in that it fails to advise those affected by its terms of what they must and must not do to avoid contravention of its terms, and is reviewable for its vagueness.

6. FIFTH SUBMISSION: THE NOTICE WOULD PLACE SOUTH AFRICA IN BREACH OF ITS OBLIGATIONS UNDER INTERNATIONAL LAW

6.1. The Notice places South Africa in breach of its obligations under international law, inasmuch as it is a signatory to the WTO Agreement on Rules of Origin ("the WTO Origin Agreement"). The principles enunciated in the WTO Origin Agreement have been incorporated into South Africa's municipal law by means of section 46 of the Customs Act. The provisions of the Notice which require products purportedly originating from the OPT to be identified as having the OPT as their country of origin are not only in conflict with the provisions of section 24 of the Act, but are in conflict with the principles of the WTO Origin Agreement, as read with the South African Customs Act, which govern how the country of origin of goods is to be determined.

6.2. The WTO Origin Agreement requires clear and predictable rules of origin and their application, to facilitate the flow of international trade. It requires the requirements for the rules of origin to be clearly defined, and may not, of themselves, create restrictive, distorting or disruptive effects on international trade. They are not permitted to impose unduly strict requirements, or require the fulfillment of conditions not related to manufacturing or processing as a pre-requisite for the determination of the country of origin. The rules of origin are required to be administered "...in a consistent, uniform, impartial and reasonable manner", and must be based on a positive standard . The rules are required to be applied equally for all purposes.

6.3. The Notice's conflict with South Africa's obligations under the WTO Origin Agreement can be illustrated by reference to Ahava Products, which the Notice specifically identifies as a targeted product allegedly originating from the OPT:

6.3.1. The mud and materials used in Ahava cosmetic products are not excavated in the West Bank, which the Minister describes as the OPT. These materials are mined in Israeli territory adjoining the Dead Sea, which is not the subject matter of any dispute internationally.

6.3.2. All packaging is manufactured in Israel itself. The management and administration of the company takes place in Israel.

6.3.3. The only aspect of Ahava's operations which occurs in the West Bank is the processing of raw materials sourced from Israel. The kibbutz in the West Bank at which the processing of the raw materials takes place is located in

an area of the West Bank which is – by agreement with the Palestinian Authority, in terms of the Oslo Accords (as read with the Wye River Agreement) – presently under the full administrative control of Israel. Not even the PA can contend that this is an area in respect of which Israel does not enjoy de facto sovereignty pending final negotiations between the Parties in relation to the West Bank, as foreshadowed in internationally binding resolution 242.

6.4. In light of the above, it cannot be said as a fact that Ahava products originate from the West Bank or what the Minister terms "the OPT". Moreover, applying South Africa's international obligations under the WTO Origin Agreement, as read with its customs legislation, the argument that Ahava products do not originate in Israel is not legally sustainable.

6.5. Similarly, in relation to Soda Stream, the origin of the products manufactured in Israel, is even more complex. Soda Stream has five manufacturing plants worldwide, two of which are in China, two of are within the 1948 borders of Israel and one of which is located in a Jewish settlement in the West Bank. This settlement is located in the same area of the West Bank as the kibbutz at which Ahava's processing operations are conducted; namely an area which by agreement between the PA and Israeli government is under the de facto sovereignty of Israel, by virtue of the Oslo Accords as read with the Wye River Agreement, pending final negotiations in terms of Resolution 242.

6.6. Applying parity of reasoning, unless and until every single product which is imported from Israel, is analysed to determine its country of origin, it can never be said that such product has its origin in the OPT, just because a single component of the supply chain is located in Jewish settlements in the OPT, or just because the product is said to be manufactured in Israel.

6.7. The Notice is impossible to enforce, and yet exposes South African retailers to exceptionally serious consequences including criminal charges, all the more so because the onus is on retailers to prove a negative, i.e. that products bearing the label 'made in Israel' do not originate in the OPT.

6.8. In the circumstances, it is simply not possible for the Minister's Notice to stand in the light of its inconsistency with South Africa's obligations under the WTO Origin Agreement, as well as South Africa's legislation which incorporates its principles. The Notice for this reason alone lacks legality.

7. CONCLUDING REMARKS

7.1. The SAJBD makes these submissions as the central representative institution of the SA Jewish community, and the umbrella organisation of SA Jewry. Most of the country's Jewish religious congregations, Jewish societies and institutions, as well as student bodies are affiliated to it. The Board's mission is to work for the betterment of human relations between Jews and all other peoples of SA, based on mutual respect, understanding and goodwill.

7.2. The proposed issuing of the Notice is without precedent in domestic and international law. We believe that, having regard to all of the matters raised in this submission, the promulgation of the Notice will have a divisive effect on the relationship between Jews and other members of SA society. The emotive issue of Israel and the West Bank has already strained relationships between SA's Jewish and Muslim religious groups, and this has led to a rise in anti-Semitic rhetoric within public discourse in SA in recent years. A particularly vivid manifestation of the divisive consequences adverted to were the statements of the then Deputy Minister of Foreign Affairs, Fatima Hajaig, in January 2009. Current media reports also indicate that various provincial branches of the ruling party are galvanising around the Palestinian issue and have expressed concern about SA having a relationship with Israel.

7.3. The intention to issue the Notice in the manner and form proposed by the Minister not only exacerbates the tensions between the Jewish and Muslim religious groups in the country in regard to the Palestinian issue, but raises with it the consequential spectre of anti-Semitism, through creating a perception of unrestrained ministerial support for submissions made to it to act adversely to the interests of Israel, in favour of contentions by Palestinian supporters.

7.4. The SAJBD is opposed to one-sided boycotts that polarise the parties involved in the dispute and further sow ill-feeling and division within elements of the South African population itself. It believes rather in encouraging dialogue and interaction between Israelis and Palestinians on all political, social and economic levels in order to further the peace process and calls on South Africa to act in such a way as to promote such constructive engagement.

7.5. Not only is the Notice flawed legally; it detracts from South Africa's role as a recognised international peace-maker. The South African government should assume the lead in endeavouring to broker peace negotiations between the two parties, and in so doing, fulfil its constitutionally enshrined purpose.

7.6. The Notice, demanding the use of labels containing an endorsement of specific political positions that are neither clear-cut nor universally accepted, significantly detracts from this purpose. For this reason, and for all the reasons advanced herein, the Board requests that the Notice be withdrawn.