

**REGULATIONS ON THE ALLEGED
LABELLING OF PRODUCTS ORIGINATING
FROM OCCUPIED PALESTINIAN TERRITORY
WRONGLY LABELLED AS ORIGINATING IN
ISRAEL IN TERMS OF S24 OF THE CONSUMER
PROTECTION ACT, 2008**

**SUBMISSIONS BY THE SOUTH AFRICAN
ZIONIST FEDERATION**

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Introduction

- 1 On 10 May 2012 the Minister of Trade and Industry gazetted a Notice in respect of the alleged "Labeling of Products Originating from Occupied Palestinian Territory Wrongly Labeled as Originating in Israel in terms of section 24 of the Consumer Protection Act, 2008" ("the Notice").¹
- 2 The South African Zionist Federation ("the SAZF") strongly opposes the Notice. Amongst other things, the SAZF submits that the Notice is unlawful for a number of fundamental reasons. In addition, the Notice is politically loaded and misguided, ill-advised, misconceived, and makes inappropriate use of country of origin rules.
- 3 In the light of the SAZF's serious concerns, on which we elaborate below, we strongly urge the Minister to refrain from issuing the Notice, or any variation thereof, in a final form and to refrain from issuing regulations based thereon.
- 4 The SAZF submits these representations to the Chairperson to be considered by the Portfolio Committee on Trade and Industry which, we understand from the media, will be deliberating on the regulations proposed by the Minister of Trade and Industry soon.
- 5 As the draft regulations have not been publicised, we deal herein with the issues which arise from the Notice to the extent that the regulations follow the form of the Notice.

The Notice is unlawful

Minister's powers confined to those conferred in empowering legislation

- 6 As pointed out by the Constitutional Court –

"it is by now axiomatic that the exercise of all public power must comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of the rule of law."²

¹ Notice No 379, Gazette No 35328, 10 May 2012

² *Albutt v Centre for the Study of Violence and Reconciliation, and Others* 2010 (3) SA 293 (CC), para 49

- 7 The rule of law requires that all of those who exercise public powers do so within the powers which have been conferred upon them and that all their decisions and acts are authorized by law.³
- 8 The making of regulations constitutes "administrative action" as contemplated in s33 of the Constitution of the Republic of South Africa, 1996 ("the Constitution").⁴ In issuing the Notice, the Minister has purported to exercise a power and/or perform a function under an empowering statute, namely the CPA. The Minister's conduct thus constitutes administrative action which must comply with s33 of the Constitution and with the Promotion of Administrative Justice Act, 2000 ("PAJA").⁵
- 9 In purporting to exercise a power and/or perform a function in terms of the CPA, the Minister's powers and functions are limited to those conferred upon it by that statute.⁶ A functionary exercising public power must act within the confines of the powers lawfully conferred upon it.⁷ If it exceeds the powers vested in it by the empowering legislation, its actions will be illegal and invalid.⁸

The statutory framework

- 10 s24 of the Consumer Protection Act, 2008 ("the CPA") deals with product labeling and trade descriptions⁹.

³ *Vodacom Service Provider Company (Pty) Ltd and Another v the National Consumer Commission*, decision of the National Consumer Tribunal, Unreported Decision, Case No NCT/2793/2011/101 (1)(P), para 39

⁴ *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC), at para 128

⁵ Even if the Minister's conduct did not constitute administrative action, the Minister's conduct must conform with the Constitutional principle of legality. The principle is as stated in *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) at paras 79 - 81. "The official must act within the law and in a manner consistent with the Constitution. He or she must not misconstrue the power conferred. Secondly, the decision must be rationally related to the purpose for which the power was conferred. If not, the exercise of the power would, in effect, be arbitrary and at odds with the rule of law." (*City of Cape Town v Premier, Western Cape, and Others* 2008 (6) SA 345 (C))

⁶ *SA Medical Council v Maytham* 1931 TPD 45 at 47; *Taj Properties (Pty) Limited v Bobat* 1952 (1) SA 723 (N); *R v Jeremiah* 1956 (1) SA 8 (SR) at 13; *Turner & Company (Pty) Limited v Arcturius Road Council* 1958 (1) SA 409 (SR)

⁷ *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC), at paras 56 and 58

⁸ *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC), at para 101

⁹ "Trade description" is defined in s1 of the CPA as meaning –

- (a) any description, statement or other direct or indirect indication, other than a trade mark, as to
 - (i) the number, quantity, measure, weight or gauge of any goods;

11 In essence, s24 contemplates four kinds of provisions:¹⁰

11.1 First, s24(1) of the CPA sets out the circumstances in which a trade description is said to be "applied to goods".¹¹

11.2 Second, s24(2) and (3) set out certain prohibited conduct in relation to product labeling and trade descriptions. These are prohibitions of general application. s24(2) and (3) do not require the application/ display of product labels/trade descriptions. However, to the extent that goods are voluntarily labeled or a trade description is voluntarily applied to goods, those labels/trade descriptions may not be misleading, defaced, etc.¹²

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- (ii) the name of the producer or producer of any goods;
 - (iii) the ingredients of which any goods consist, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or
 - (vi) any goods being the subject of any patent, privilege or copyright; or
 - (b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a)"

¹⁰ The full text of s24 of the CPA and the definition of "trade description" are set out in full in Annexure A hereto

¹¹ s24(1) of the CPA provides:

"For the purposes of this section, a trade description is applied to goods if it is -

- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
- (b) displayed together with, or in proximity to the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
- (c) is contained in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods

¹² s24(2) and (3) of the CPA provide:

"(2) A person must not-

- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
- (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.

(3) A retailer of goods must-

- (a) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that -
 - (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (2)(b); and
- (b) with respect to any goods within the retailer's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or subsection (2)(b)

11.3 Third, the Minister may, in accordance with s24(4), prescribe regulations requiring certain categories of goods to have a trade description applied to them and may prescribe certain related provisions.¹³ The producer or importer of goods that have been so prescribed by the Minister must apply a trade description to those prescribed goods indicating the country of origin of the goods and other prescribed information.¹⁴ The Minister has previously exercised his powers under s24(4), when prescribing Reg. 6 of the Consumer Protection Act Regulations, 2011 ("the CPA Regulations"). For ease of reference, the full text of Reg. 6 is set out in **Annexure B** hereto.

11.4 Fourth, the Minister may prescribe regulations requiring the display of a Notice disclosing the presence of genetically modified ingredients/components of goods/services.¹⁵ The Minister has previously exercised his powers under s24(6), when prescribing Reg. 7 of the CPA Regulations. Reg. 7 is not relevant for present purposes.

12 The Minister purported to make the Notice in terms of s26 of the CPA.¹⁶ Given that s26 is irrelevant in the present context, the only possible provision in s24 in terms of which the Minister could purport to act is s24(4). We accordingly turn to consider s24(4) in more detail. It provides:

¹³ s24(4) of the CPA provides:

"The Minister may prescribe-

- (a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);
- (b) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
- (c) the information that is required to be included in any trade description, from among the categories of information contemplated in the definition of "trade description" in section 1"

¹⁴ s24(5) of the CPA. It provides:

"The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing-

- (a) the country of origin of the goods; and
- (b) any other prescribed information"

¹⁵ s25(6) of the CPA provides:

"Any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a Notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations"

¹⁶ The reference in the Notice to s26 of the CPA, which deals with sales records, is confusing but clearly seems to be an error

"The Minister may prescribe-

- (a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);
- (b) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
- (c) the information that is required to be included in any trade description, from among the categories of information contemplated in the definition of "trade description" in section 1."

13 s24(5) provides:

"The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing-

- (a) the country of origin of the goods; and
- (b) any other prescribed information."

Notice falls outside ambit of Minister's powers

14 The Minister's powers in s24(4) of the CPA are narrowly circumscribed. The Minister may prescribe only –

- 14.1 categories of goods that are required to have a trade description applied to them, as contemplated in s24(5);
- 14.2 the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
- 14.3 the information that is required to be included in such a trade description, from among the categories of information contemplated in the definition of "trade description" in s1.

- 15 The Notice does not seek to prescribe categories of goods that are required to have a trade description applied to them (a positive obligation). Rather, it seeks "to require traders in South Africa, not to incorrectly label products that originate from the Occupied Palestinian Territory (OPT) as products of Israel" (a negative obligation/prohibition), and singles out "products of Ahava such as cosmetic brands, technology and soft drinks" which "are being distributed in South Africa" (for present purposes we'll refer to these as the "singled out products") without purporting to require the singled out products to have a trade description applied to them.¹⁷ (In addition to being *ultra vires*, this (i) singling out of individual products, (ii) on the basis of allegations of a particular politically-orientated lobby group, namely the Open Shuhada street.org (Open Shuhada) and (iii) the finding by the Minister of a contravention of the CPA on that basis, is inappropriate and unlawful. We will elaborate on this later on in these submissions.)
- 16 "Products that originate from the Occupied Palestinian Territory (OPT)" are not a "category" of goods as contemplated in the CPA. The purpose of s24 of the CPA is clearly to prescribe categories of goods based on their shared intrinsic qualities such as their make-up and use, rather than their origin. This is evident from the approach adopted in Reg.6(1) of the CPA Regulations, which applies only to the categories of goods specified in Annexure D to the CPA Regulations, namely textiles,¹⁸ clothing,¹⁹ shoes and leather goods²⁰ as referred to in specific provisions of the Harmonised Customs Tariff. The approach in Reg.6(1) accords with international best practice, namely to identify categories of goods (e.g. foods, textiles, clothing, shoes and leather) in accordance with customs laws. The approach adopted in Reg.6(1) of the CPA Regulations is in sharp contrast to the approach adopted to the Notice.
- 17 The Notice also does not seek to prescribe any rules to be used in accordance with any international agreement for the purpose of determining the country of origin of the singled out products. The Notice makes no reference to any rules. Nor does it refer to

¹⁷ Second paragraph of the Notice

¹⁸ Textiles as listed in Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 63 of the Harmonised Customs Tariff

¹⁹ Clothing as listed in Chapter 61, 62 and 65 of the Harmonised Customs Tariff

²⁰ Shoes and leather goods as listed in Chapter 42, 43 and 64 of the Harmonized Customs Tariff

any international agreements. Nor is the so-called "Occupied Palestinian Territory" – which is in fact disputed territory (another issue which we'll come back to later in these submissions) a "country". Nor does the Notice seek to apply any rules in accordance with any international agreements to any goods or components of goods. The Notice simply states that the "Government of South Africa recognises the State of Israel only within the borders demarcated by the United Nations (UN) in 1948. Such demarcated borders of Israel by the UN do not include Palestinian Territories occupied after 1967." This is a political viewpoint and foreign policy statement, rather than the application of any rules in accordance with any international agreements to determine the country of origin of goods. It is a far cry from what is contemplated in s24(4) of the CPA.

- 18 Nor does the Notice seek to prescribe any information that must be included in a trade description. The Minister's powers in this regard are limited to requiring goods to contain a trade description displaying specific information from among the categories of information contemplated in the definition of "trade description" in s1 of the CPA, such as, for present purposes, the place or country of origin of goods. The Minister's powers in respect of the rules to be used to determine the country of origin of goods is circumscribed by s24(4)(b) of the CPA. We have already explained in paragraph 17 above that the Notice does not comply with s24(4)(b).
- 19 For these reasons, the Notice clearly exceeds the powers conferred upon the Minister in s24 of the CPA. It is not authorised by the empowering legislation and is unlawful.

Notice usurps powers of the National Consumer Commission

- 20 In addition to lacking any empowering statutory provision, the Minister has overstepped the boundaries of the executive role and usurped the functions of the National Consumer Commission ("the Commission").
- 21 The Commission was established in terms of s85 of the CPA. It must exercise the powers and perform the functions assigned to it in terms of the CPA or any other law²¹ in the most cost-efficient and effective manner, and in accordance with the values and

²¹ s92(1) of the Act

principles in section 195 of the Constitution.²² The Commission is responsible to enforce the CPA, amongst other things by receiving complaints concerning alleged prohibited conduct²³ and dealing with those complaints in accordance with Part B of Chapter 3 of the CPA.²⁴

- 22 To the extent that anyone believed that a person had engaged in prohibited conduct in contravention of s24 of the CPA and/or the CPA Regulations, the appropriate procedure would have been to initiate a complaint with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with the CPA.²⁵ The Commission may directly initiate a complaint concerning any alleged prohibited conduct on its own motion, or, amongst other things, when directed to do so by the Minister in terms of s86(b) of the CPA.²⁶ Part B of Chapter 3 of the CPA sets out the process to be followed by the Commission upon receiving or initiating a complaint, including the obligation to conduct an investigation in accordance with s73 of the CPA. The options available to the Commission after concluding an investigation are set out in the CPA.
- 23 We do not intend to elaborate on the role of the Commission, its powers, functions or the procedures to be followed by it. The point we wish to make is that the CPA contains detailed provisions delineating the roles, powers, functions and duties of the Minister and the Commission respectively. The Commission is the appropriate forum to address allegations of conduct prohibited by the CPA, and the CPA contains detailed provisions in that regard, including procedural safeguards. It is impermissible for the Minister to usurp the Commission's powers, functions and duties. The making of regulations by the Minister containing a finding of prohibited conduct (e.g. that particular Notices are misleading or that products originating from disputed territories are "wrongly labelled") is not appropriate, permissible or lawful.

²² s85(2) of the Act

²³ "Prohibited conduct" is defined as meaning an act or omission in contravention of the CPA

²⁴ s99 of the CPA

²⁵ s71(1) of the CPA

²⁶ s71(2) of the CPA

- 24 This is another reason why the Minister's action is not lawful, reasonable or procedurally fair, and the Notice is unlawful.
- 25 Nor is it permissible for the Minister to gazette a Notice regarding the onus of proof in respect of prohibited conduct, namely that "The burden for proving where the products originate will lie with traders."
- 26 Firstly, the Minister has no discretion to determine who will bear the burden of proof. That is a question of law. Secondly, "trader" is a concept alien to the CPA. The CPA sets out who must comply with a particular provision. For example, s24(2) applies to "a person", s24(3) applies to a "retailer", and s24(5) applies to a "producer or importer of any goods that have been prescribed". The terms "person", "retailer", "producer" and "importer" are all defined in the CPA. The Notice's statement that "the burden for proving where the products originate will lie with traders" is accordingly inappropriate and unlawful.

The Minister appears to have pre-determined the issue

- 27 The SAZF is also concerned that the Minister has pre-determined the issues. First, we are concerned at the Minister's apparent statement to the press that "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."²⁷ Second, we are concerned that the Minister has relied on the allegations of pro-Palestinian lobby group Open Shuhada. Third, we are concerned that the Minister is unwilling to be swayed in this initiative because the Notice reflects "foreign policy". These are additional reasons why we believe that the Minister's action is not lawful, reasonable or procedurally fair.

The Notice discriminates unfairly by arbitrarily singling out for censure goods from the disputed Israeli/Palestinian territories

- 28 The Notice discriminates unfairly between, on the one hand, the disputed Israeli/Palestinian territories, and on the other hand, other disputed/occupied territories.

²⁷ *Move to relabel 'Israeli' goods as bad*, Mail & Guardian, 16 September 2011, annexed hereto marked "C"

It ignores other political communities contemplating a move to political independence or statehood. The Notice does not deal with goods from any of the following:

- 28.1 Basque regions (Spain and France);
 - 28.2 Corsica (France);
 - 28.3 Abkhazia (Georgia);
 - 28.4 Dagestan (Russia);
 - 28.5 Chechnya (Russia);
 - 28.6 Kurdistan (Iraq);
 - 28.7 Kashmir (India);
 - 28.8 East Turkestan (China);
 - 28.9 Tibet (China);
 - 28.10 Ogaden (Ethiopia);
 - 28.11 Aceh (Indonesia); or
 - 28.12 Patani (Thailand).
- 29 The Notice arbitrarily and unfairly discriminates against the people of Israel on the basis of race, ethnic or social origin, religion, conscience, belief, culture and birth. The Notice does not constitute law of general application.
- 30 The Notice then extends the unfair discrimination by arbitrarily singling out products of Ahava. (Ahava is an Israeli company which has been the target of anti-Israel boycott campaigns. Ahava, which has predominantly Israeli shareholders, manufactures skin care products made of mud and mineral-based compounds from the Dead Sea located in Israel. The company's head office and logistic warehouse are located in Holon (in the center of Israel, near the Ben Gurion international airport), while the main manufacturing plant is in Mitzpe Shalem, an Israeli settlement located near the Dead Sea in the West Bank (North of the Green Line). Ahava is licensed by the Israeli

government to mine raw materials at the Dead Sea (within the Green Line.) About 180 out of 200 Ahava employees work within the Green Line. Moreover, Mitzpe Shalem is part of "Area C" in terms of the Oslo Accords, namely an area of the West Bank over which Israel was, by joint agreement between Israel and the Palestine Liberation Organization ("PLO"), granted full civil and security control, except over Palestinian civilians. In other words, Ahava's manufacturing plant is in an area over which Israel exercises full control and jurisdiction.

- 31 This singling out of an individual brand for censure, is arbitrary and capricious, and is likely to play directly into the hands of those who promote boycott campaigns against the state of Israel, its people and its products, such as Open Shuhada, a pro-Palestinian South African-based lobby group, on whose allegations the Minister has relied in gazetting the Notice.

Ulterior purpose

- 32 The Notice is not rationally related to the purpose for which the powers in s24(4) of the CPA were conferred, and the Minister's conduct is, for this additional reason, unlawful. We elaborate on this below.
- 33 s24 is in Part D of Chapter 2 of the CPA, entitled "Right to disclosure and information", which, in turn, is intended to achieve one of the CPA's primary purposes, namely to "improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs".²⁸ One of the CPA's primary purposes is to "promote and advance the social and economic welfare of consumers in South Africa", *inter alia* by "improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour".²⁹
- 34 This is the purported purpose of the Notice put forward by the Minister in various press statements.

²⁸ Preamble of the CPA

²⁹ s3(1)(e) of the CPA

- 35 We support initiatives to enable consumers to make informed choices based on truthful information. However, the effect of the Notice is to distort information by requiring labels to reflect the South African government's subjective beliefs, political affiliations and foreign policy.
- 36 Whilst the Minister has purported to have made the Notice to enable South African consumers to make informed choices, the Minister has acted in pursuance of an ulterior purpose, namely to achieve political objectives in line with the South African government's foreign policy. This is evident from the singling out of Israel, the reliance on the allegations of Open Shuhada, and the political spin put on the required labelling (namely the Occupied Palestinian Territory). We elaborate on the political issues in paragraphs 38 to 48 below.
- 37 The Notice also makes inappropriate use of country of origin rules, which we deal with in paragraphs 56 to 68 below.

The Notice is politically loaded

- 38 The Notice is politically loaded, frames political issues as consumer issues, and takes an unfortunate stance on polarised political issues, without due regard to all the relevant facts.
- 39 The Notice has framed the labeling of goods originating in the disputed territories of the West Bank and Gaza as consumer issues, when they are in fact political issues.
- 40 This is evident from the fact that the Notice singles out products originating from the disputed Israeli/Palestinian territories, and the Minister's reliance on the allegations of the Open Shuhada, a pro-Palestinian lobby group. It was also readily conceded by the Minister during his meeting with representatives of the SAZF on 31 May 2012, when the Minister indicated that the Notice reflected "foreign policy".
- 41 It is also evident from the Notice's use of the loaded term "Occupied Palestinian Territory" to refer to territories which are in fact disputed territories. The politically-loaded term "occupied territories" or "occupation" seems to be used only in relation to Israel, notwithstanding the numerous other territories engaged in territorial disputes. The language of "occupation" also delegitimises the Jewish historical attachment to

Israel and allows Palestinian spokesmen and anti-Israel lobby groups to obfuscate this history.

42 The Notice also states that the "Government of South Africa recognises the State of Israel only within the borders demarcated by the United Nations (UN) in 1948. Such demarcated borders of Israel by the UN do not include Palestinian Territories occupied after 1967". Moreover, the UN did not, either in 1948 or ever, recognise "Palestine" as a state. In fact, it has specifically found that Palestine is not a state.

43 The Notice overlooks the following:

43.1 The borders of the State of Israel were defined by the Plan for the Partition of Palestine, drawn up by UNSCOP and approved on 29 November 1947 by United Nations General Assembly Resolution 181.³⁰ The Partition Plan was accepted by the Jewish leadership but was rejected by the Palestinians and the Arab states.

43.2 On 14 May 1948, Israel declared its independence within the borders of the Jewish State set out in the Partition Plan. The following day the neighbouring Arab states declared war on the newly formed State of Israel, heralding the start of the 1948 Arab-Israeli war.

43.3 After the Arab-Israeli war, the 1949 Armistice Agreements established the separation lines between the combatants, leaving Israel in control of some of the areas designated for the Arab state under the Partition Plan, the kingdom of Transjordan in control of the West Bank, and Egypt in control of the Gaza Strip. Thus, from the 1948 Arab-Israeli war until the 1967 Six Day War, the West Bank was controlled by Jordan and the Gaza Strip was controlled by Egypt. Jordan and Egypt controlled these territories unlawfully as a result of the Arab-Israeli war of aggression against Israel in 1948 when Egypt and

³⁰ Israel's rights were preserved under the United Nations as well, according to Article 80 of the UN Charter, which provided that nothing in the UN Charter should be "construed to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments." These rights were unaffected by UN General Assembly Resolution 181 of November 1947 -- the Partition Plan -- which was a non-binding recommendation that was rejected, in any case, by the Palestinians and the Arab states

Jordan invaded the nascent State of Israel, along with three other Arab armies.

- 43.4 Israel took control of the West Bank and the Gaza Strip as a result of a defensive war, a war imposed on Israel by a coalition of Arab states in 1967, rather than as a result of Israel's decision to "occupy".
- 43.5 UN Security Council Resolution 242, adopted in November 1967, months after the 1967 Six-Day War, never called on Israel to withdraw from all the territories it captured, but rather proposed that "secure and recognized boundaries" replace the 1949 armistice lines from which Israel was attacked. Thus, the UN Security Council recognized that Israel was entitled to part of these territories for new defensible borders. The supposition that there are no competing claims to sovereignty in the West Bank is thus legally flawed.
- 43.6 These new boundaries need to be negotiated between Israel and its Arab neighbours and are at the core of the Israeli-Palestinian negotiations.
- 43.7 The Oslo Accords signed in the 1990s between Israel and the Palestine Liberation Organization (PLO) resulted in the establishment of, and transfer of limited powers to, a newly created Palestinian Authority. Israel transferred specific powers to the newly created Palestinian Authority. The Palestinian Authority does not have any powers which have not been explicitly transferred to it. The Oslo Accords called for the withdrawal of the Israeli Defence Forces from parts of the West Bank and the Gaza Strip. Permanent issues such as borders were deliberately left to be decided by the negotiating parties at a later stage.
- 43.8 Israel disengaged from the Gaza Strip in 2005 and all Israeli citizens were evicted from the area. The Gaza Strip can therefore not be said to be "occupied" by Israel.
- 44 Given these fundamental sources of international legality, Israel possesses legal rights with respect to the West Bank and Gaza Strip that appear to be ignored by the Minister. Even if Israel only seeks "secure boundaries" that cover part of the West Bank and the Gaza Strip, there is a world of difference between a situation in which Israel approaches

the international community as a "foreign occupier" with no territorial rights, and one in which Israel has strong historical rights to the land that were recognized by the main bodies serving as the source of international legitimacy in the previous century.

- 45 Describing the territories as "Occupied" or "Palestinian" may serve the political agenda of one side in the dispute, but it prejudices the outcome of future territorial negotiations that were envisioned under UN Security Council Resolution 242. It also represents a total denial of Israel's fundamental rights.
- 46 It would be far more accurate to describe the West Bank and Gaza Strip as "disputed territories" to which both Israelis and Palestinians have claims. As U.S. Ambassador to the UN Madeleine Albright stated in March 1994: "We simply do not support the description of the territories occupied by Israel in the 1967 War as occupied Palestinian territory."
- 47 The Israel/Palestinian conflict is one of the most sensitive, controversial and polarised topics in the world. It is most unfortunate that the South African Government has sought to use consumer protection legislation to further political aims. The Notice is inflammatory and divisive. The Government's attempts are likely to have the adverse effect of polarizing South African and international communities over the Middle East conflict, inflame hatred and xenophobia, and fuel anti-Israel Boycott campaigns. Most unfortunately, it is likely to hinder (rather than assist) the Middle East peace process.
- 48 The political controversy and fundamental divergence of views are further reasons why the Minister and the consumer authorities should refrain from proclaiming on whether labels referring to West Bank products as products of Israel are "misleading".

The "state" of Palestine does not exist

- 49 A further reason why country of origin debates should not, in principle, even arise in relation to the disputed Palestinian territories is that Palestine is not a country/state.
- 50 Despite the unilateral declaration of independence adopted by the Palestine National Council in 1988, "Palestine" does not exist as a state and its unilateral declaration of independence is not internationally recognised. The Palestine Liberation Organisation ("PLO") merely has UN observer status (not even non-member status). Only one out of

numerous UN organisations recognise the PLO as a member (namely UNESCO) and only about 130 out of 193 UN Member States³¹ recognise the "state" of Palestine. The recent PLO application for United Nations membership was rejected, because the United Nations Committee on the Admission of New Members was unable to make a unanimous recommendation to the Security Council. More recently, the International Criminal Court considered whether Palestine is a State within the context of the Rome Statute, and concluded that it is not.³²

- 51 In the circumstances, a "country" of origin debate does not even begin in respect of the disputed territories. At best, the place of origin would be the West Bank or Gaza.
- 52 Given that Palestine is not a country, it could never be misleading to state that goods originating in the disputed territories are made in Israel.
- 53 If the Minister had acted lawfully and reasonably in accordance with the Minister's powers in s24 of the CPA (which the Minister has not), the Minister would have had (in addition to the points raised elsewhere in this document) to prescribe categories of goods that are required to have a trade description applied to them "as contemplated in subsection 5".³³ In terms of s24(5) –

"the producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing –

- (a) the country of origin of the goods; and
- (b) any other prescribed information."

- 54 Thus, in addition to any information from among the categories of information contemplated in the definition of trade description that the Minister may, by regulation, require to be included in a trade description, any goods prescribed in terms of s24(4)(a) must disclose the country (not place) of origin of the goods.

³¹ Including South Africa

³² International Criminal Court, *Situation in Palestine*, 3 April 2012

³³ s24(1)(a) of the CPA

55 Regardless of the disputed nature of the territory, it is internationally recognised that "Palestine"/the disputed territories are not a country in and of themselves. They are a part of Israel. The country of origin could, thus, only ever be Israel.

The Notice makes inappropriate use of country of origin rules

56 The Notice blurs the distinction between international trade rules and foreign policy.

57 Country of origin rules are not uncommon in South Africa and internationally, and we are not suggesting that they do not have a place, when used appropriately. However, we submit that the Notice is a complete misapplication of country of origin rules. We elaborate on this below.

58 Country of origin rules are not ordinarily aimed at international territorial disputes. Their ordinary aim is to determine whether a particular preferential arrangement (e.g. duty free import) will be applied to a given product in international trade.

59 Country of origin rules ordinarily arise in the international trade context. Determining the country of origin of a product is important for properly assessing tariffs, enforcing trade remedies (such as antidumping and countervailing duties) or quantitative restrictions (tariff quotas), and statistical purposes. Other commercial trade policies are also linked with origin determinations, such as country of origin labelling and government procurement regulations.

60 The role of rules of origin in the international trade context has been described as follows:

"Rules of origin constitute an essential component of any preferential trading regime. The aim of these rules in preferential agreements is to avoid free-riding by third parties. The parties to such agreements are interested in reducing trade barriers on a mutual basis, while maintaining existing external trade protection *vis-à-vis* non contracting parties.

...

Rules of origin function as a differentiating mechanism to determine whether a particular discriminatory arrangement will be applied to a given product in

international trade. Discriminatory arrangements operate in both directions, providing for either preferential or detrimental treatment (e.g., tariff concessions or anti-dumping measures, respectively).

...

Ordinarily, only products that are manufactured within a particular State are eligible to benefit from the preferences accorded to that State."

- 61 Determining the country of origin of particular goods can be very complex, particularly in the current era of globalisation and international trade.
- 62 The World Trade Organisation ("WTO") Rules of Origin Agreement aims at long-term harmonisation of rules of origin, other than rules of origin relating to the granting of tariff preferences, and to ensure that such rules do not themselves create unnecessary obstacles to trade. The Rules of Origin Agreement requires WTO members to ensure that –
- 62.1 their rules of origin are transparent;
 - 62.2 they do not have restricting, distorting or disruptive effects on international trade;
 - 62.3 they are administered in a consistent, uniform, impartial and reasonable manner; and
 - 62.4 they are based on a positive standard (in other words, they should state what *does confer origin rather than what does not*).
- 63 South Africa has been a WTO member since 1 January 1995 and is accordingly bound by the Rules of Origin Agreement. The Palestinian Authority is not a WTO member, although it is seeking WTO observer status.
- 64 Those countries which have considered the labelling of goods originating in the disputed territories of the West Bank and the Gaza Strip have done so in the context of international trade. For example, the European Community has entered into separate trade and co-operation agreements with (i) the State of Israel (the "EC-Israel Agreement") and (ii) the Palestine Liberation Organisation (PLO) for the benefit of the

Palestinian Authority of the West Bank and the Gaza Strip (the EC-PLO Agreement"). The purpose of the *Brita* judgment (often cited in support of pro-Palestinian lobby groups) was to draw a distinction between goods originating in Israel which are entitled to preferential treatment under the EC-Israel Agreement, and those from the settlement areas, which are not so entitled. This is necessarily so because the agreement that applies to your goods is that which exists between your country and your trading partner's country respectively.

65 Similarly, the United States of America ("USA") uses non-preferential rules of origin to determine origin of goods imported from countries with which the USA has most-favoured-nation (MFN) status, and are the principal regulatory tools for accurate assessment of tariffs on imports, addressing country of origin labelling issues, qualifying goods for government procurement, and enforcing trade remedy actions and trade sanctions. Preferential rules of origin are used to determine the eligibility of imported goods from certain U.S. free trade agreement (FTA) partners and certain developing country beneficiaries to receive duty-free or reduced tariff benefits under bilateral or regional FTAs, trade preference programmes (such as the Generalized System of Preferences), and other special import programs. Preferential rule of origin schemes vary from agreement to agreement and preference to preference. There is no specific U.S. statute that provides an overall definition of "rules of origin" or "country of origin." Instead, U.S. Customs and Border Protection (CBP) - the agency primarily responsible for determining country of origin (as it is for enforcing the tariff, customs, and other laws that apply to imported products) - relies on a body of court decisions, CBP regulations, and agency interpretations to confer origin on an imported product if the matter is in doubt.

66 The United States-Israel Free Trade Area Agreement ("IFTA") provides for free or reduced rates of duty for merchandise imported into the USA from Israel. The IFTA is intended to stimulate trade between the USA and Israel. Reduced or duty free treatment is granted under the IFTA to any article which is the growth, product, or manufacture of Israel if, amongst other conditions, the article is imported directly from Israel, the West Bank, the Gaza Strip, or a Qualifying Industrial Zone into the US customs territory. Merchandise imported into the United States from the West Bank, the Gaza Strip or a qualifying industrial zone are accorded preferential tariff treatment

if they satisfy certain origin rules. Acceptable country of origin markings for goods which are produced in the West Bank and/or Gaza Strip are "West Bank/Gaza", "West Bank/Gaza Strip", "West Bank and Gaza", and "West Bank and Gaza Strip", as well as "West Bank", "Gaza" or "Gaza Strip".³⁴

- 67 The purpose of this section is not to elaborate in detail on international trade rules and the country of origin markings arising out of the free trade agreements with various jurisdictions, but rather to explain the context in which such country of origin labelling issues ordinarily arise, and to show that the current political application is entirely inappropriate.
- 68 The Notice would contravene the WTO Rules of Origin Agreement (see paragraph 61 above). In addition, the Notice is overly simplistic and out of kilter with the country of origin rules adopted in other jurisdictions.
- 69 The Notice also contradicts the South African government's position adopted in other contexts. For example, s18 of the Merchandise Marks Act, 1941 (which provision was not repealed by the CPA), provides that in any prosecution for an offence under the provisions of that Act, "evidence that any imported goods were shipped at any port shall *prima facie* evidence that those goods were made or produced in the country within which that port is situated."

Conclusion

- 70 For all of the abovementioned reasons, the SAZF strongly urges the Minister to refrain from issuing the Notice, or any variation thereof, in a final form or to issue regulations in the form contained in the Notice.

³⁴ *Country of Origin Marking of Products from the West Bank and Gaza*, Department of the Treasury, Customs service, T.D. 97 - 16, 14 March 1997

Annexure A: s24 of CPA and definition of "trade description"

"24 Product labelling and trade descriptions

- (1) For the purposes of this section, a trade description is applied to goods if it is -
- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
 - (b) displayed together with, or in proximity to the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
 - (c) is contained in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) A person must not-
- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.
- (3) A retailer of goods must-
- (a) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that -
 - (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

**REGULATIONS ON THE ALLEGED
LABELLING OF PRODUCTS ORIGINATING
FROM OCCUPIED PALESTINIAN TERRITORY
WRONGLY LABELLED AS ORIGINATING IN
ISRAEL IN TERMS OF S24 OF THE CONSUMER
PROTECTION ACT, 2008**

**SUBMISSIONS BY THE SOUTH AFRICAN
ZIONIST FEDERATION**

August 2012

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Introduction

- 1 On 10 May 2012 the Minister of Trade and Industry gazetted a Notice in respect of the alleged "Labeling of Products Originating from Occupied Palestinian Territory Wrongly Labeled as Originating in Israel in terms of section 24 of the Consumer Protection Act, 2008" ("the Notice").¹
- 2 The South African Zionist Federation ("the SAZF") strongly opposes the Notice. Amongst other things, the SAZF submits that the Notice is unlawful for a number of fundamental reasons. In addition, the Notice is politically loaded and misguided, ill-advised, misconceived, and makes inappropriate use of country of origin rules.
- 3 In the light of the SAZF's serious concerns, on which we elaborate below, we strongly urge the Minister to refrain from issuing the Notice, or any variation thereof, in a final form and to refrain from issuing regulations based thereon.
- 4 The SAZF submits these representations to the Chairperson to be considered by the Portfolio Committee on Trade and Industry which, we understand from the media, will be deliberating on the regulations proposed by the Minister of Trade and Industry soon.
- 5 As the draft regulations have not been publicised, we deal herein with the issues which arise from the Notice to the extent that the regulations follow the form of the Notice.

The Notice is unlawful

Minister's powers confined to those conferred in empowering legislation

- 6 As pointed out by the Constitutional Court –

"it is by now axiomatic that the exercise of all public power must comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of the rule of law."²

¹ Notice No 379, Gazette No 35328, 10 May 2012

² *Albutt v Centre for the Study of Violence and Reconciliation, and Others* 2010 (3) SA 293 (CC), para 49

- 7 The rule of law requires that all of those who exercise public powers do so within the powers which have been conferred upon them and that all their decisions and acts are authorized by law.³
- 8 The making of regulations constitutes "administrative action" as contemplated in s33 of the Constitution of the Republic of South Africa, 1996 ("the Constitution").⁴ In issuing the Notice, the Minister has purported to exercise a power and/or perform a function under an empowering statute, namely the CPA. The Minister's conduct thus constitutes administrative action which must comply with s33 of the Constitution and with the Promotion of Administrative Justice Act, 2000 ("PAJA").⁵
- 9 In purporting to exercise a power and/or perform a function in terms of the CPA, the Minister's powers and functions are limited to those conferred upon it by that statute.⁶ A functionary exercising public power must act within the confines of the powers lawfully conferred upon it.⁷ If it exceeds the powers vested in it by the empowering legislation, its actions will be illegal and invalid.⁸

The statutory framework

- 10 s24 of the Consumer Protection Act, 2008 ("the CPA") deals with product labeling and trade descriptions⁹.

³ *Vodacom Service Provider Company (Pty) Ltd and Another v the National Consumer Commission*, decision of the National Consumer Tribunal, Unreported Decision, Case No NCT/2793/2011/101 (1)(P), para 39

⁴ *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC), at para 128

⁵ Even if the Minister's conduct did not constitute administrative action, the Minister's conduct must conform with the Constitutional principle of legality. The principle is as stated in *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) at paras 79 - 81. "The official must act within the law and in a manner consistent with the Constitution. He or she must not misconstrue the power conferred. Secondly, the decision must be rationally related to the purpose for which the power was conferred. If not, the exercise of the power would, in effect, be arbitrary and at odds with the rule of law." (*City of Cape Town v Premier, Western Cape, and Others* 2008 (6) SA 345 (C))

⁶ *SA Medical Council v Maytham* 1931 TPD 45 at 47; *Taj Properties (Pty) Limited v Bobat* 1952 (1) SA 723 (N); *R v Jeremiah* 1956 (1) SA 8 (SR) at 13; *Turner & Company (Pty) Limited v Arcturius Road Council* 1958 (1) SA 409 (SR)

⁷ *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC), at paras 56 and 58

⁸ *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC), at para 101

⁹ "Trade description" is defined in s1 of the CPA as meaning –

"(a) any description, statement or other direct or indirect indication, other than a trade mark, as to—
(i) the number, quantity, measure, weight or gauge of any goods;

11 In essence, s24 contemplates four kinds of provisions:¹⁰

11.1 First, s24(1) of the CPA sets out the circumstances in which a trade description is said to be "applied to goods".¹¹

11.2 Second, s24(2) and (3) set out certain prohibited conduct in relation to product labeling and trade descriptions. These are prohibitions of general application. s24(2) and (3) do not require the application/ display of product labels/trade descriptions. However, to the extent that goods are voluntarily labeled or a trade description is voluntarily applied to goods, those labels/trade descriptions may not be misleading, defaced, etc.¹²

-
- (ii) the name of the producer or producer of any goods;
 - (iii) the ingredients of which any goods consist, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or
 - (vi) any goods being the subject of any patent, privilege or copyright; or
 - (b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a)"

¹⁰ The full text of s24 of the CPA and the definition of "trade description" are set out in full in Annexure A hereto

¹¹ s24(1) of the CPA provides:

"For the purposes of this section, a trade description is applied to goods if it is -

- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
- (b) displayed together with, or in proximity to the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
- (c) is contained in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods

¹² s24(2) and (3) of the CPA provide:

"(2) A person must not-

- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
- (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.

(3) A retailer of goods must-

- (a) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that -
 - (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (2)(b); and
- (b) with respect to any goods within the retailer's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or subsection (2)(b)

11.3 Third, the Minister may, in accordance with s24(4), prescribe regulations requiring certain categories of goods to have a trade description applied to them and may prescribe certain related provisions.¹³ The producer or importer of goods that have been so prescribed by the Minister must apply a trade description to those prescribed goods indicating the country of origin of the goods and other prescribed information.¹⁴ The Minister has previously exercised his powers under s24(4), when prescribing Reg. 6 of the Consumer Protection Act Regulations, 2011 ("the CPA Regulations"). For ease of reference, the full text of Reg. 6 is set out in **Annexure B** hereto.

11.4 Fourth, the Minister may prescribe regulations requiring the display of a Notice disclosing the presence of genetically modified ingredients/components of goods/services.¹⁵ The Minister has previously exercised his powers under s24(6), when prescribing Reg. 7 of the CPA Regulations. Reg. 7 is not relevant for present purposes.

12 The Minister purported to make the Notice in terms of s26 of the CPA.¹⁶ Given that s26 is irrelevant in the present context, the only possible provision in s24 in terms of which the Minister could purport to act is s24(4). We accordingly turn to consider s24(4) in more detail. It provides:

¹³ s24(4) of the CPA provides:

"The Minister may prescribe-

- (a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);
- (b) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
- (c) the information that is required to be included in any trade description, from among the categories of information contemplated in the definition of "trade description" in section 1"

¹⁴ s24(5) of the CPA. It provides:

"The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing-

- (a) the country of origin of the goods; and
- (b) any other prescribed information"

¹⁵ s25(6) of the CPA provides:

"Any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a Notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations"

¹⁶ The reference in the Notice to s26 of the CPA, which deals with sales records, is confusing but clearly seems to be an error

"The Minister may prescribe-

- (a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);
- (b) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
- (c) the information that is required to be included in any trade description, from among the categories of information contemplated in the definition of "trade description" in section 1."

13 s24(5) provides:

"The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing-

- (a) the country of origin of the goods; and
- (b) any other prescribed information."

Notice falls outside ambit of Minister's powers

14 The Minister's powers in s24(4) of the CPA are narrowly circumscribed. The Minister may prescribe only -

- 14.1 categories of goods that are required to have a trade description applied to them, as contemplated in s24(5);
- 14.2 the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
- 14.3 the information that is required to be included in such a trade description, from among the categories of information contemplated in the definition of "trade description" in s1.

- 15 The Notice does not seek to prescribe categories of goods that are required to have a trade description applied to them (a positive obligation). Rather, it seeks "to require traders in South Africa, not to incorrectly label products that originate from the Occupied Palestinian Territory (OPT) as products of Israel" (a negative obligation/prohibition), and singles out "products of Ahava such as cosmetic brands, technology and soft drinks" which "are being distributed in South Africa" (for present purposes we'll refer to these as the "singled out products") without purporting to require the singled out products to have a trade description applied to them.¹⁷ (In addition to being *ultra vires*, this (i) singling out of individual products, (ii) on the basis of allegations of a particular politically-orientated lobby group, namely the Open Shuhada street.org (Open Shuhada) and (iii) the finding by the Minister of a contravention of the CPA on that basis, is inappropriate and unlawful. We will elaborate on this later on in these submissions.)
- 16 "Products that originate from the Occupied Palestinian Territory (OPT)" are not a "category" of goods as contemplated in the CPA. The purpose of s24 of the CPA is clearly to prescribe categories of goods based on their shared intrinsic qualities such as their make-up and use, rather than their origin. This is evident from the approach adopted in Reg.6(1) of the CPA Regulations, which applies only to the categories of goods specified in Annexure D to the CPA Regulations, namely textiles,¹⁸ clothing,¹⁹ shoes and leather goods²⁰ as referred to in specific provisions of the Harmonised Customs Tariff. The approach in Reg.6(1) accords with international best practice, namely to identify categories of goods (e.g. foods, textiles, clothing, shoes and leather) in accordance with customs laws. The approach adopted in Reg.6(1) of the CPA Regulations is in sharp contrast to the approach adopted to the Notice.
- 17 The Notice also does not seek to prescribe any rules to be used in accordance with any international agreement for the purpose of determining the country of origin of the singled out products. The Notice makes no reference to any rules. Nor does it refer to

¹⁷ Second paragraph of the Notice

¹⁸ Textiles as listed in Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 63 of the Harmonised Customs Tariff

¹⁹ Clothing as listed in Chapter 61, 62 and 65 of the Harmonised Customs Tariff

²⁰ Shoes and leather goods as listed in Chapter 42, 43 and 64 of the Harmonized Customs Tariff

any international agreements. Nor is the so-called "Occupied Palestinian Territory" – which is in fact disputed territory (another issue which we'll come back to later in these submissions) a "country". Nor does the Notice seek to apply any rules in accordance with any international agreements to any goods or components of goods. The Notice simply states that the "Government of South Africa recognises the State of Israel only within the borders demarcated by the United Nations (UN) in 1948. Such demarcated borders of Israel by the UN do not include Palestinian Territories occupied after 1967." This is a political viewpoint and foreign policy statement, rather than the application of any rules in accordance with any international agreements to determine the country of origin of goods. It is a far cry from what is contemplated in s24(4) of the CPA.

18 Nor does the Notice seek to prescribe any information that must be included in a trade description. The Minister's powers in this regard are limited to requiring goods to contain a trade description displaying specific information from among the categories of information contemplated in the definition of "trade description" in s1 of the CPA, such as, for present purposes, the place or country of origin of goods. The Minister's powers in respect of the rules to be used to determine the country of origin of goods is circumscribed by s24(4)(b) of the CPA. We have already explained in paragraph 17 above that the Notice does not comply with s24(4)(b).

19 For these reasons, the Notice clearly exceeds the powers conferred upon the Minister in s24 of the CPA. It is not authorised by the empowering legislation and is unlawful.

Notice usurps powers of the National Consumer Commission

20 In addition to lacking any empowering statutory provision, the Minister has overstepped the boundaries of the executive role and usurped the functions of the National Consumer Commission ("the Commission").

21 The Commission was established in terms of s85 of the CPA. It must exercise the powers and perform the functions assigned to it in terms of the CPA or any other law²¹ in the most cost-efficient and effective manner, and in accordance with the values and

²¹ s92(1) of the Act

principles in section 195 of the Constitution.²² The Commission is responsible to enforce the CPA, amongst other things by receiving complaints concerning alleged prohibited conduct²³ and dealing with those complaints in accordance with Part B of Chapter 3 of the CPA.²⁴

- 22 To the extent that anyone believed that a person had engaged in prohibited conduct in contravention of s24 of the CPA and/or the CPA Regulations, the appropriate procedure would have been to initiate a complaint with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with the CPA.²⁵ The Commission may directly initiate a complaint concerning any alleged prohibited conduct on its own motion, or, amongst other things, when directed to do so by the Minister in terms of s86(b) of the CPA.²⁶ Part B of Chapter 3 of the CPA sets out the process to be followed by the Commission upon receiving or initiating a complaint, including the obligation to conduct an investigation in accordance with s73 of the CPA. The options available to the Commission after concluding an investigation are set out in the CPA.
- 23 We do not intend to elaborate on the role of the Commission, its powers, functions or the procedures to be followed by it. The point we wish to make is that the CPA contains detailed provisions delineating the roles, powers, functions and duties of the Minister and the Commission respectively. The Commission is the appropriate forum to address allegations of conduct prohibited by the CPA, and the CPA contains detailed provisions in that regard, including procedural safeguards. It is impermissible for the Minister to usurp the Commission's powers, functions and duties. The making of regulations by the Minister containing a finding of prohibited conduct (e.g. that particular Notices are misleading or that products originating from disputed territories are "wrongly labelled") is not appropriate, permissible or lawful.

²² s85(2) of the Act

²³ "Prohibited conduct" is defined as meaning an act or omission in contravention of the CPA

²⁴ s99 of the CPA

²⁵ s71(1) of the CPA

²⁶ s71(2) of the CPA

- 24 This is another reason why the Minister's action is not lawful, reasonable or procedurally fair, and the Notice is unlawful.
- 25 Nor is it permissible for the Minister to gazette a Notice regarding the onus of proof in respect of prohibited conduct, namely that "The burden for proving where the products originate will lie with traders."
- 26 Firstly, the Minister has no discretion to determine who will bear the burden of proof. That is a question of law. Secondly, "trader" is a concept alien to the CPA. The CPA sets out who must comply with a particular provision. For example, s24(2) applies to "a person", s24(3) applies to a "retailer", and s24(5) applies to a "producer or importer of any goods that have been prescribed". The terms "person", "retailer", "producer" and "importer" are all defined in the CPA. The Notice's statement that "the burden for proving where the products originate will lie with traders" is accordingly inappropriate and unlawful.

The Minister appears to have pre-determined the issue

- 27 The SAZF is also concerned that the Minister has pre-determined the issues. First, we are concerned at the Minister's apparent statement to the press that "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."²⁷ Second, we are concerned that the Minister has relied on the allegations of pro-Palestinian lobby group Open Shuhada. Third, we are concerned that the Minister is unwilling to be swayed in this initiative because the Notice reflects "foreign policy". These are additional reasons why we believe that the Minister's action is not lawful, reasonable or procedurally fair.

The Notice discriminates unfairly by arbitrarily singling out for censure goods from the disputed Israeli/Palestinian territories

- 28 The Notice discriminates unfairly between, on the one hand, the disputed Israeli/Palestinian territories, and on the other hand, other disputed/occupied territories.

²⁷ *Move to relabel 'Israeli' goods as bad*, Mail & Guardian, 16 September 2011, annexed hereto marked "C"

It ignores other political communities contemplating a move to political independence or statehood. The Notice does not deal with goods from any of the following:

- 28.1 Basque regions (Spain and France);
 - 28.2 Corsica (France);
 - 28.3 Abkhazia (Georgia);
 - 28.4 Dagestan (Russia);
 - 28.5 Chechnya (Russia);
 - 28.6 Kurdistan (Iraq);
 - 28.7 Kashmir (India);
 - 28.8 East Turkestan (China);
 - 28.9 Tibet (China);
 - 28.10 Ogaden (Ethiopia);
 - 28.11 Aceh (Indonesia); or
 - 28.12 Patani (Thailand).
- 29 The Notice arbitrarily and unfairly discriminates against the people of Israel on the basis of race, ethnic or social origin, religion, conscience, belief, culture and birth. The Notice does not constitute law of general application.
- 30 The Notice then extends the unfair discrimination by arbitrarily singling out products of Ahava. (Ahava is an Israeli company which has been the target of anti-Israel boycott campaigns. Ahava, which has predominantly Israeli shareholders, manufactures skin care products made of mud and mineral-based compounds from the Dead Sea located in Israel. The company's head office and logistic warehouse are located in Holon (in the center of Israel, near the Ben Gurion international airport), while the main manufacturing plant is in Mitzpe Shalem, an Israeli settlement located near the Dead Sea in the West Bank (North of the Green Line). Ahava is licensed by the Israeli

government to mine raw materials at the Dead Sea (within the Green Line.) About 180 out of 200 Ahava employees work within the Green Line. Moreover, Mitzpe Shalem is part of "Area C" in terms of the Oslo Accords, namely an area of the West Bank over which Israel was, by joint agreement between Israel and the Palestine Liberation Organization ("PLO"), granted full civil and security control, except over Palestinian civilians. In other words, Ahava's manufacturing plant is in an area over which Israel exercises full control and jurisdiction.

- 31 This singling out of an individual brand for censure, is arbitrary and capricious, and is likely to play directly into the hands of those who promote boycott campaigns against the state of Israel, its people and its products, such as Open Shuhada, a pro-Palestinian South African-based lobby group, on whose allegations the Minister has relied in gazetting the Notice.

Ulterior purpose

- 32 The Notice is not rationally related to the purpose for which the powers in s24(4) of the CPA were conferred, and the Minister's conduct is, for this additional reason, unlawful. We elaborate on this below.
- 33 s24 is in Part D of Chapter 2 of the CPA, entitled "Right to disclosure and information", which, in turn, is intended to achieve one of the CPA's primary purposes, namely to "improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs".²⁸ One of the CPA's primary purposes is to "promote and advance the social and economic welfare of consumers in South Africa", *inter alia* by "improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour".²⁹
- 34 This is the purported purpose of the Notice put forward by the Minister in various press statements.

²⁸ Preamble of the CPA

²⁹ s3(1)(e) of the CPA

- 35 We support initiatives to enable consumers to make informed choices based on truthful information. However, the effect of the Notice is to distort information by requiring labels to reflect the South African government's subjective beliefs, political affiliations and foreign policy.
- 36 Whilst the Minister has purported to have made the Notice to enable South African consumers to make informed choices, the Minister has acted in pursuance of an ulterior purpose, namely to achieve political objectives in line with the South African government's foreign policy. This is evident from the singling out of Israel, the reliance on the allegations of Open Shuhada, and the political spin put on the required labelling (namely the Occupied Palestinian Territory). We elaborate on the political issues in paragraphs 38 to 48 below.
- 37 The Notice also makes inappropriate use of country of origin rules, which we deal with in paragraphs 56 to 68 below.

The Notice is politically loaded

- 38 The Notice is politically loaded, frames political issues as consumer issues, and takes an unfortunate stance on polarised political issues, without due regard to all the relevant facts.
- 39 The Notice has framed the labeling of goods originating in the disputed territories of the West Bank and Gaza as consumer issues, when they are in fact political issues.
- 40 This is evident from the fact that the Notice singles out products originating from the disputed Israeli/Palestinian territories, and the Minister's reliance on the allegations of the Open Shuhada, a pro-Palestinian lobby group. It was also readily conceded by the Minister during his meeting with representatives of the SAZF on 31 May 2012, when the Minister indicated that the Notice reflected "foreign policy".
- 41 It is also evident from the Notice's use of the loaded term "Occupied Palestinian Territory" to refer to territories which are in fact disputed territories. The politically-loaded term "occupied territories" or "occupation" seems to be used only in relation to Israel, notwithstanding the numerous other territories engaged in territorial disputes. The language of "occupation" also delegitimises the Jewish historical attachment to

Israel and allows Palestinian spokesmen and anti-Israel lobby groups to obfuscate this history.

42 The Notice also states that the "Government of South Africa recognises the State of Israel only within the borders demarcated by the United Nations (UN) in 1948. Such demarcated borders of Israel by the UN do not include Palestinian Territories occupied after 1967". Moreover, the UN did not, either in 1948 or ever, recognise "Palestine" as a state. In fact, it has specifically found that Palestine is not a state.

43 The Notice overlooks the following:

43.1 The borders of the State of Israel were defined by the Plan for the Partition of Palestine, drawn up by UNSCOP and approved on 29 November 1947 by United Nations General Assembly Resolution 181.³⁰ The Partition Plan was accepted by the Jewish leadership but was rejected by the Palestinians and the Arab states.

43.2 On 14 May 1948, Israel declared its independence within the borders of the Jewish State set out in the Partition Plan. The following day the neighbouring Arab states declared war on the newly formed State of Israel, heralding the start of the 1948 Arab-Israeli war.

43.3 After the Arab-Israeli war, the 1949 Armistice Agreements established the separation lines between the combatants, leaving Israel in control of some of the areas designated for the Arab state under the Partition Plan, the kingdom of Transjordan in control of the West Bank, and Egypt in control of the Gaza Strip. Thus, from the 1948 Arab-Israeli war until the 1967 Six Day War, the West Bank was controlled by Jordan and the Gaza Strip was controlled by Egypt. Jordan and Egypt controlled these territories unlawfully as a result of the Arab-Israeli war of aggression against Israel in 1948 when Egypt and

³⁰ Israel's rights were preserved under the United Nations as well, according to Article 80 of the UN Charter, which provided that nothing in the UN Charter should be "construed to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments." These rights were unaffected by UN General Assembly Resolution 181 of November 1947 -- the Partition Plan -- which was a non-binding recommendation that was rejected, in any case, by the Palestinians and the Arab states

Jordan invaded the nascent State of Israel, along with three other Arab armies.

- 43.4 Israel took control of the West Bank and the Gaza Strip as a result of a defensive war, a war imposed on Israel by a coalition of Arab states in 1967, rather than as a result of Israel's decision to "occupy".
- 43.5 UN Security Council Resolution 242, adopted in November 1967, months after the 1967 Six-Day War, never called on Israel to withdraw from all the territories it captured, but rather proposed that "secure and recognized boundaries" replace the 1949 armistice lines from which Israel was attacked. Thus, the UN Security Council recognized that Israel was entitled to part of these territories for new defensible borders. The supposition that there are no competing claims to sovereignty in the West Bank is thus legally flawed.
- 43.6 These new boundaries need to be negotiated between Israel and its Arab neighbours and are at the core of the Israeli-Palestinian negotiations.
- 43.7 The Oslo Accords signed in the 1990s between Israel and the Palestine Liberation Organization (PLO) resulted in the establishment of, and transfer of limited powers to, a newly created Palestinian Authority. Israel transferred specific powers to the newly created Palestinian Authority. The Palestinian Authority does not have any powers which have not been explicitly transferred to it. The Oslo Accords called for the withdrawal of the Israeli Defence Forces from parts of the West Bank and the Gaza Strip. Permanent issues such as borders were deliberately left to be decided by the negotiating parties at a later stage.
- 43.8 Israel disengaged from the Gaza Strip in 2005 and all Israeli citizens were evicted from the area. The Gaza Strip can therefore not be said to be "occupied" by Israel.
- 44 Given these fundamental sources of international legality, Israel possesses legal rights with respect to the West Bank and Gaza Strip that appear to be ignored by the Minister. Even if Israel only seeks "secure boundaries" that cover part of the West Bank and the Gaza Strip, there is a world of difference between a situation in which Israel approaches

the international community as a "foreign occupier" with no territorial rights, and one in which Israel has strong historical rights to the land that were recognized by the main bodies serving as the source of international legitimacy in the previous century.

- 45 Describing the territories as "Occupied" or "Palestinian" may serve the political agenda of one side in the dispute, but it prejudges the outcome of future territorial negotiations that were envisioned under UN Security Council Resolution 242. It also represents a total denial of Israel's fundamental rights.
- 46 It would be far more accurate to describe the West Bank and Gaza Strip as "disputed territories" to which both Israelis and Palestinians have claims. As U.S. Ambassador to the UN Madeleine Albright stated in March 1994: "We simply do not support the description of the territories occupied by Israel in the 1967 War as occupied Palestinian territory."
- 47 The Israel/Palestinian conflict is one of the most sensitive, controversial and polarised topics in the world. It is most unfortunate that the South African Government has sought to use consumer protection legislation to further political aims. The Notice is inflammatory and divisive. The Government's attempts are likely to have the adverse effect of polarizing South African and international communities over the Middle East conflict, inflame hatred and xenophobia, and fuel anti-Israel Boycott campaigns. Most unfortunately, it is likely to hinder (rather than assist) the Middle East peace process.
- 48 The political controversy and fundamental divergence of views are further reasons why the Minister and the consumer authorities should refrain from proclaiming on whether labels referring to West Bank products as products of Israel are "misleading".

The "state" of Palestine does not exist

- 49 A further reason why country of origin debates should not, in principle, even arise in relation to the disputed Palestinian territories is that Palestine is not a country/state.
- 50 Despite the unilateral declaration of independence adopted by the Palestine National Council in 1988, "Palestine" does not exist as a state and its unilateral declaration of independence is not internationally recognised. The Palestine Liberation Organisation ("PLO") merely has UN observer status (not even non-member status). Only one out of

numerous UN organisations recognise the PLO as a member (namely UNESCO) and only about 130 out of 193 UN Member States³¹ recognise the "state" of Palestine. The recent PLO application for United Nations membership was rejected, because the United Nations Committee on the Admission of New Members was unable to make a unanimous recommendation to the Security Council. More recently, the International Criminal Court considered whether Palestine is a State within the context of the Rome Statute, and concluded that it is not.³²

51 In the circumstances, a "country" of origin debate does not even begin in respect of the disputed territories. At best, the place of origin would be the West Bank or Gaza.

52 Given that Palestine is not a country, it could never be misleading to state that goods originating in the disputed territories are made in Israel.

53 If the Minister had acted lawfully and reasonably in accordance with the Minister's powers in s24 of the CPA (which the Minister has not), the Minister would have had (in addition to the points raised elsewhere in this document) to prescribe categories of goods that are required to have a trade description applied to them "as contemplated in subsection 5".³³ In terms of s24(5) –

"the producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing –

- (a) the country of origin of the goods; and
- (b) any other prescribed information."

54 Thus, in addition to any information from among the categories of information contemplated in the definition of trade description that the Minister may, by regulation, require to be included in a trade description, any goods prescribed in terms of s24(4)(a) must disclose the country (not place) of origin of the goods.

³¹ Including South Africa

³² International Criminal Court, *Situation in Palestine*, 3 April 2012

³³ s24(1)(a) of the CPA

- 55 Regardless of the disputed nature of the territory, it is internationally recognised that "Palestine"/the disputed territories are not a country in and of themselves. They are a part of Israel. The country of origin could, thus, only ever be Israel.

The Notice makes inappropriate use of country of origin rules

- 56 The Notice blurs the distinction between international trade rules and foreign policy.
- 57 Country of origin rules are not uncommon in South Africa and internationally, and we are not suggesting that they do not have a place, when used appropriately. However, we submit that the Notice is a complete misapplication of country of origin rules. We elaborate on this below.
- 58 Country of origin rules are not ordinarily aimed at international territorial disputes. Their ordinary aim is to determine whether a particular preferential arrangement (e.g. duty free import) will be applied to a given product in international trade.
- 59 Country of origin rules ordinarily arise in the international trade context. Determining the country of origin of a product is important for properly assessing tariffs, enforcing trade remedies (such as antidumping and countervailing duties) or quantitative restrictions (tariff quotas), and statistical purposes. Other commercial trade policies are also linked with origin determinations, such as country of origin labelling and government procurement regulations.
- 60 The role of rules of origin in the international trade context has been described as follows:

"Rules of origin constitute an essential component of any preferential trading regime. The aim of these rules in preferential agreements is to avoid free-riding by third parties. The parties to such agreements are interested in reducing trade barriers on a mutual basis, while maintaining existing external trade protection *vis-à-vis* non contracting parties.

...

Rules of origin function as a differentiating mechanism to determine whether a particular discriminatory arrangement will be applied to a given product in

international trade. Discriminatory arrangements operate in both directions, providing for either preferential or detrimental treatment (e.g., tariff concessions or anti-dumping measures, respectively).

...

Ordinarily, only products that are manufactured within a particular State are eligible to benefit from the preferences accorded to that State."

- 61 Determining the country of origin of particular goods can be very complex, particularly in the current era of globalisation and international trade.
- 62 The World Trade Organisation ("WTO") Rules of Origin Agreement aims at long-term harmonisation of rules of origin, other than rules of origin relating to the granting of tariff preferences, and to ensure that such rules do not themselves create unnecessary obstacles to trade. The Rules of Origin Agreement requires WTO members to ensure that –
 - 62.1 their rules of origin are transparent;
 - 62.2 they do not have restricting, distorting or disruptive effects on international trade;
 - 62.3 they are administered in a consistent, uniform, impartial and reasonable manner; and
 - 62.4 they are based on a positive standard (in other words, they should state what *does confer origin rather than what does not*).
- 63 South Africa has been a WTO member since 1 January 1995 and is accordingly bound by the Rules of Origin Agreement. The Palestinian Authority is not a WTO member, although it is seeking WTO observer status.
- 64 Those countries which have considered the labelling of goods originating in the disputed territories of the West Bank and the Gaza Strip have done so in the context of international trade. For example, the European Community has entered into separate trade and co-operation agreements with (i) the State of Israel (the "EC-Israel Agreement") and (ii) the Palestine Liberation Organisation (PLO) for the benefit of the

Palestinian Authority of the West Bank and the Gaza Strip (the EC-PLO Agreement"). The purpose of the *Brita* judgment (often cited in support of pro-Palestinian lobby groups) was to draw a distinction between goods originating in Israel which are entitled to preferential treatment under the EC-Israel Agreement, and those from the settlement areas, which are not so entitled. This is necessarily so because the agreement that applies to your goods is that which exists between your country and your trading partner's country respectively.

- 65 Similarly, the United States of America ("USA") uses non-preferential rules of origin to determine origin of goods imported from countries with which the USA has most-favoured-nation (MFN) status, and are the principal regulatory tools for accurate assessment of tariffs on imports, addressing country of origin labelling issues, qualifying goods for government procurement, and enforcing trade remedy actions and trade sanctions. Preferential rules of origin are used to determine the eligibility of imported goods from certain U.S. free trade agreement (FTA) partners and certain developing country beneficiaries to receive duty-free or reduced tariff benefits under bilateral or regional FTAs, trade preference programmes (such as the Generalized System of Preferences), and other special import programs. Preferential rule of origin schemes vary from agreement to agreement and preference to preference. There is no specific U.S. statute that provides an overall definition of "rules of origin" or "country of origin." Instead, U.S. Customs and Border Protection (CBP) - the agency primarily responsible for determining country of origin (as it is for enforcing the tariff, customs, and other laws that apply to imported products) - relies on a body of court decisions, CBP regulations, and agency interpretations to confer origin on an imported product if the matter is in doubt.
- 66 The United States-Israel Free Trade Area Agreement ("IFTA") provides for free or reduced rates of duty for merchandise imported into the USA from Israel. The IFTA is intended to stimulate trade between the USA and Israel. Reduced or duty free treatment is granted under the IFTA to any article which is the growth, product, or manufacture of Israel if, amongst other conditions, the article is imported directly from Israel, the West Bank, the Gaza Strip, or a Qualifying Industrial Zone into the US customs territory. Merchandise imported into the United States from the West Bank, the Gaza Strip or a qualifying industrial zone are accorded preferential tariff treatment

if they satisfy certain origin rules. Acceptable country of origin markings for goods which are produced in the West Bank and/or Gaza Strip are "West Bank/Gaza", "West Bank/Gaza Strip", "West Bank and Gaza", and "West Bank and Gaza Strip", as well as "West Bank", "Gaza" or "Gaza Strip".³⁴

- 67 The purpose of this section is not to elaborate in detail on international trade rules and the country of origin markings arising out of the free trade agreements with various jurisdictions, but rather to explain the context in which such country of origin labelling issues ordinarily arise, and to show that the current political application is entirely inappropriate.
- 68 The Notice would contravene the WTO Rules of Origin Agreement (see paragraph 61 above). In addition, the Notice is overly simplistic and out of kilter with the country of origin rules adopted in other jurisdictions.
- 69 The Notice also contradicts the South African government's position adopted in other contexts. For example, s18 of the Merchandise Marks Act, 1941 (which provision was not repealed by the CPA), provides that in any prosecution for an offence under the provisions of that Act, "evidence that any imported goods were shipped at any port shall *prima facie* evidence that those goods were made or produced in the country within which that port is situated."

Conclusion

- 70 For all of the abovementioned reasons, the SAZF strongly urges the Minister to refrain from issuing the Notice, or any variation thereof, in a final form or to issue regulations in the form contained in the Notice.

³⁴ *Country of Origin Marking of Products from the West Bank and Gaza*, Department of the Treasury, Customs service, T.D. 97 - 16, 14 March 1997

Annexure A: s24 of CPA and definition of "trade description"

"24 Product labelling and trade descriptions

- (1) For the purposes of this section, a trade description is applied to goods if it is -
- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
 - (b) displayed together with, or in proximity to the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
 - (c) is contained in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) A person must not-
- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.
- (3) A retailer of goods must-
- (a) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that -
 - (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

- (ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (2)(b); and
 - (b) with respect to any goods within the retailer's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or subsection (2)(b).
- (4) The Minister may prescribe-
- (a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);
 - (b) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
 - (c) the information that is required to be included in any trade description, from among the categories of information contemplated in the definition of "trade description" in section 1.
- (5) The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing-
- (a) the country of origin of the goods; and
 - (b) any other prescribed information.
- (6) Any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a Notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations."

"Trade description" is defined as meaning -

- "(a) any description, statement or other direct or indirect indication, other than a trade mark, as to-
 - (i) the number, quantity, measure, weight or gauge of any goods;

- (ii) the name of the producer or producer of any goods;
 - (iii) the ingredients of which any goods consist, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or
 - (vi) any goods being the subject of any patent, privilege or copyright;
or
- (b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a)"³⁵

³⁵ s1 of the CPA

Annexure B: Reg. 6 of Consumer Protection Act Regulations

6. Product labelling and trade descriptions: textiles, clothing, shoes and leather goods

- (1) In order to assist consumers in making informed decisions or choices, for purposes of subsections (4) and (5) of section 24 of the Act and subject to subregulation (2), the importation into or the sale in the Republic of the goods specified in Annexure "D", irrespective of whether such goods were manufactured or adapted in the Republic or elsewhere, is prohibited unless -
- (a) a trade description, meeting the requirements of section 22 of the Act, is applied to such goods in a conspicuous and easily legible manner stating clearly-
 - (i) the country in which they were manufactured, produced or adapted;
 - (ii) in the event of a textile manufacturer, importer or seller operating in the Republic using imported greige fabric to produce dyed, printed or finished fabric in the Republic, that such fabric has been dyed, printed or finished in South Africa from imported fabric; and
 - (iii) that a locally manufactured product using imported material must state "Made in South Africa from imported materials";
 - (b) such goods conform to the South African national standards for fibre content and care labelling in accordance with the provisions of Government Notice No. 2410 of 2000, published in the Gazette of 30 June 2000;
 - (c) if after such goods have been reconditioned, adapted, rebuilt or remade, whether in the Republic or elsewhere, a trade description is applied to such goods in a conspicuous and easily legible manner stating clearly that such goods have so been reconditioned, adapted, rebuilt or remade, as the case may be;

- (d) if the goods were wholly assembled or made in the Republic, a trade description is applied to such goods in a conspicuous and easily legible manner stating "Made in South Africa."; or
 - (e) goods are correctly labelled.
- (2) This regulation does not apply to -
- (a) textiles so small in size that labelling is not reasonably possible;
 - (b) second-hand clothing imported for charity purposes; or
 - (c) goods where the number of goods imported by a natural person does not exceed 1000 single items in any one calendar month;
- but does apply to goods imported for marketing purposes.
- (3) This regulation does not amend or repeal or detract from any other regulation made under or in terms of any legislation.

Annexure C: Mail and Guardian article, 16 September 2011

