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REPUBLIEK VAN SUID-AFRIKA

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THE PRESIDENCY

No. 1318 10 December 2001

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 52 of 2001: Marketing of Agricultural Products Amendment Act, 2001.

DIE PRESIDENSIE

No. 1318 10 Desember 2001

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 52 van 2001: Wysigingswet op Bemarking van Landbouprodukte, 2001.



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[Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 4 December 2001.)

To amend the Marketing of Agricultural Products Act, 1996, so as to provide anew for the procedure to be followed in the constitution of the National Agricultural Marketing Council and its committees; to alter certain procedures in respect of financial matters in order to bring the said Act into line with the Public Finance Management Act, 1999; to terminate the role of parliamentary committees in the administration of the first-mentioned Act; to make further provision for the manner in which levies are to be utilised; to provide for the auditing of levies; to provide for consultation by the Minister with the National Agricultural Marketing Council before prohibitions on the import or export of agricultural products are instituted; to make further provision for the liquidation of Boards established under the repealed Marketing Act, 1968; to make further provision regarding levies collected under the said Marketing Act; and to provide for matters connected therewith.

Amendment of section 4 of Act 47 of 1996

(a) by the substitution for subsections (4) and (5) of the following subsections:

- “(4) Whenever it is necessary to appoint a member of the Council—
- (a) the Minister shall, by notice in the *Gazette* as well as **[in the national news]** other appropriate media, **[including at least two newspapers circulating throughout the Republic]** and by invitation to the parliamentary committees, call for the nomination of persons who comply with the criteria referred to in subsection (2);
- (b) the Minister shall establish a selection committee, consisting of not more than seven members appointed by the Minister **[of whom two shall be the chairpersons of the parliamentary committees or their delegates]**;
- (c) the Minister shall refer all nominations received to such selection committee;
- (d) the selection committee shall compile a short-list of candidates in accordance with the provisions of subsections (2) and (3) **[and shall submit the short-list to the Secretary to Parliament for submission to the parliamentary committees]**;

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 4 Desember 2001.)

WET

Tot wysiging van die Wet op die Bemarking van Landbouprodukte, 1996, ten einde opnuut voorsiening te maak vir die prosedure wat gevolg moet word by die samestelling van die Nasionale Landboubemarkingsraad en sy komitees; sekere prosedures ten opsigte van finansiële aangeleenthede te wysig ten einde genoemde Wet in ooreenstemming te bring met die Wet op Openbare Finansiële Bestuur, 1999; die rol van parlementêre komitees in die administrasie van eersgenoemde Wet te beëindig; verder voorsiening te maak vir die wyse waarop heffings benut moet word; voorsiening te maak vir die ouditering van heffings; voorsiening te maak vir oorlegpleging deur die Minister met die Nasionale Landboubemarkingsraad voordat verbodende op die invoer of uitvoer van landbouprodukte ingestel word; verder voorsiening te maak vir die likwidasië van rade wat ingevolge die herroepe Bemarkingswet, 1968, ingestel is; verder voorsiening te maak met betrekking tot heffings wat ingevorder is kragtens genoemde Bemarkingswet; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 4 van Wet 47 van 1996

1. Artikel 4 van die Hoofwet word hierby gewysig deur—

- (a) subartikels (4) en (5) deur die volgende subartikels te vervang: 5
 - “(4) Wanneer dit ook al nodig is om 'n lid van die Raad aan te stel—
 - (a) moet die Minister by kennisgewing in die *Staatskoerant* sowel as **[in die nasionale nuusmedia met inbegrip van minstens twee nuusblaaie wat in die hele Republiek in omloop is,]** ander geskikte media en by uitnodiging aan die parlementêre komitees, die nominasie van persone 10 wat voldoen aan die kriteria in subartikel (2) bedoel, versoek;
 - (b) moet die Minister 'n keuringskomitee instel, bestaande uit hoogstens sewe lede wat deur die Minister aangestel word **[van wie twee die voorsitters van die parlementêre komitees of hulle afgevaardigdes moet wees];** 15
 - (c) moet die Minister alle nominasies wat ontvang word na daardie keuringskomitee verwys;
 - (d) moet die keuringskomitee 'n kortlys van kandidate saamstel ooreenkomstig die bepalinge van subartikels (2) en (3) **[en die kortlys aan die Sekretaris van die Parlement verstrek vir voorlegging aan die 20 parlementêre komitees];**

- (e) the **[parliamentary committees]** selection committee shall, within 30 days after **[they have placed the consideration of the short-list on their agendas, jointly]** the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories contemplated in subsection (2); 5
- (f) the Minister shall appoint such number of members as is required from the list of candidates recommended by the **[parliamentary committees]** selection committee; and
- (g) within 30 days after making any appointment in terms of paragraph (f), the Minister shall inform the parliamentary committees in writing of the appointment made. 10
- (5) Until the **[parliamentary committees recommend]** selection committee recommends candidates as contemplated in subsection (4)(e), the Minister may temporarily reappoint Council members whose terms of office have expired.”; and 15
- (b) by the addition of the following subsections:
- “(13) A person may not be nominated or appointed as a member of the Council if such person—
- (a) is not a South African citizen or permanently resident in the Republic; 20
- (b) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to serve as a member of the Council;
- (c) has failed or is unable to comply in full with a judgement or order, including an order as to costs, given against such person by a court of law in civil proceedings; 25
- (d) has been convicted of an offence involving an element of dishonesty or has been sentenced for any other offence committed on or after 27 April 1994, to a period of imprisonment without the option of a fine; 30
- (e) is of unsound mind; or
- (f) has contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court. 35
- (14) A member of the Council shall vacate his or her office if that member—
- (a) is declared insolvent or surrenders his or her estate voluntarily;
- (b) is convicted of an offence and sentenced to a period of imprisonment without the option of a fine; 40
- (c) resigns as a member;
- (d) is nominated as a candidate for election as a member of Parliament, a Provincial House of Traditional Leaders, the National House of Traditional Leaders, a provincial legislature or the council or other governing body of a local government body or is appointed as an official of a political party and whose functions as such are incompatible with the functions of a member; 45
- (e) is removed from office under subsection (15); or
- (f) has contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court. 50
- (15) The Minister may at any time remove a member of the Council from office if such member is incompetent to fulfil his or her duties or is guilty of misconduct.”.

Amendment of section 7 of Act 47 of 1996

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2. Section 7 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Council may appoint any person it deems suitable as a member of such a committee.”.

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- (e) moet die **[parlementêre komitees]** keuringskomitee binne 30 dae **[nadat hulle die oorweging van die kortlys op hulle agendas geplaas het, gesamentlik]** na die ondertekening van die briewe van aanstelling van sy lede, 'n lys van minstens drie kandidate vir elk van die kategorieë in subartikel (2) beoog, by die Minister aanbeveel; 5
- (f) moet die Minister die verlangde getal lede aanstel uit die lys van kandidate wat deur die **[parlementêre komitees]** keuringskomitee aanbeveel word.
- (g) binne 30 dae nadat 'n aanstelling gedoen is ingevolge paragraaf (f), moet die Minister die parlementêre komitees skriftelik van die aanstelling wat gedoen is, in kennis stel. 10
- (5) Totdat die **[parlementêre komitees]** keuringskomitee kandidate aanbeveel soos in subartikel (4)(e) beoog, kan die Minister lede van die Raad wie se ampstermyn verstryk het tydelik heraanstel.”
- (b) deur die byvoeging van die volgende subartikels: 15
- “(13) 'n persoon mag nie as 'n lid van die Raad genomineer of aangestel word nie indien sodanige persoon—
- (a) nie 'n Suid-Afrikaanse burger is of permanent in die Republiek woonagtig is nie;
- (b) 'n ongerehabiliteerde insolvent is ten opsigte waarvan die kurator van die insolvente boedel nie gesertifiseer het dat die insolvente persoon 'n bevoegde en geskikte persoon is om as 'n lid van die Raad te dien nie;
- (c) versuim het of nie daartoe in staat is nie om ten volle te voldoen aan 'n uitspraak of bevel, met inbegrip van 'n kostebevel, wat teen sodanige persoon toegestaan is deur 'n hof in siviele verrigtinge; 20
- (d) skuldig bevind is aan 'n misdryf waarby 'n element van oneerlikheid betrokke is, of wat gevonnissen is vir 'n ander misdryf gepleeg op of na 27 April 1994, tot 'n tydperk van tronkstraf sonder die keuse van 'n boete;
- (e) geestigsgebrekig is; of
- (f) artikel 7 van die “Promotion of Equality and Prevention of Unfair Discrimination Act, 2000” (Wet No. 4 van 2000), oortree het en dit aldus 25
- (14) 'n Lid van die Raad moet sy of haar amp ontruim indien daardie lid—
- (a) insolvent verklaar word of sy of haar boedel vrywillig oorgee;
- (b) skuldig bevind word aan 'n misdryf en gevonnissen word tot 'n tydperk van tronkstraf sonder die keuse van 'n boete; 30
- (c) bedank as 'n lid;
- (d) genomineer word as 'n kandidaat vir verkiesing as 'n lid van die Parlement, 'n Provinsiale Huis van Tradisionele Leiers, die Nasionale Huis van Tradisionele Leiers, 'n provinsiale wetgewer of die raad of ander regeringsliggaam van 'n plaaslike regeringsliggaam of aangewys is as 'n amptenaar van 'n politieke party en wie se funksies as sodanig onversoenbaar is met die funksies van 'n lid; 40
- (e) uit sy amp verwyder word kragtens subartikel (15); of
- (f) artikel 7 van die “Promotion of Equality and Prevention of Unfair Discrimination Act, 2000” (Wet No. 4 van 2000), oortree het en dit aldus 45
- (15) Die Minister kan te eniger tyd 'n lid van die Raad van sy amp onthef indien sodanige lid nie daartoe in staat is om sy of haar pligte na te kom nie of skuldig is aan wangedrag.” 50

Wysiging van artikel 7 van Wet 47 van 1996

2. Artikel 7 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Die Raad kan enige persoon wat hy geskik ag, aanstel as 'n lid van so 'n komitee.”.

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Amendment of section 8A of Act 47 of 1996, as inserted by section 4 of Act 59 of 1997

3. Section 8A of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs:

- “(a) shall in each financial year, at the time determined by the Minister, submit a budget of its estimated income and expenditure during the following financial year for approval by the Minister **[obtained with the concurrence of the Minister of Finance]**; 5
- (b) may in any financial year, at any time submit supplementary budgetary inputs of its estimated expenditure for that financial year, to the Minister for his or her approval **[in consultation with the Minister of Finance]**.”. 10

Amendment of section 9 of Act 47 of 1996, as amended by section 5 of Act 59 of 1997

4. Section 9 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

- “(d) may direct any institution or body of persons designated for the purpose of the implementation or administration of a statutory measure in terms of section 14, to furnish the Council with such information pertaining to a statutory measure as the Council or the Minister **[or the parliamentary committees]** may require;”. 15

Amendment of section 10 of Act 47 of 1996

5. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A directly affected group **[or the parliamentary committees]** may in writing request the Minister to establish, continue, amend or repeal one or more statutory measures.”. 25

Amendment of section 13 of Act 47 of 1996

6. Section 13 of the principal Act is hereby amended by the substitution for the words preceding the proviso to subsection (1) of the following words:

- “The Minister may, after consideration of the Council’s recommendations and subject to the provisions of section 15, establish, amend or revoke a statutory measure by notice in the *Gazette*, refer the matter back to the Council for further investigation or decline to take any action:”. 30

Amendment of section 15 of Act 47 of 1996, as amended by section 6 of Act 59 of 1997

7. Section 15 of the principal Act is hereby amended by— 35

- (a) the deletion of subsections (1), (2) and (3); and
- (b) the addition of the following subsections:

“(5) Notwithstanding the provisions of subsection (4)—

- (a) any levies collected, administered or kept by any person or body under this Act shall not form part of the assets of that person or body, and any levies remaining in the possession of or under the control of any person or body after the period for which such levies were approved, shall be utilised in a manner determined by the Minister; and 40
- (b) all levies shall in a manner and to the extent satisfactory to the Auditor-General be accounted for separately from any other funds or assets under the control or in possession of such person or body and be audited on an annual basis by the Auditor-General. 45

(6) The provisions of subsection (5) shall not be construed as affecting any function of the Auditor-General in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).”. 50

Wysiging van artikel 8A van Wet 47 van 1996, soos ingevoeg deur artikel 4 van Wet 59 van 1997

3. Artikel 8A van die Hoofwet word hierby gewysig deur paragrawe (a) en (b) van subartikel (3) deur die volgende paragrawe te vervang:

- (a) moet in elke boekjaar, op die tydstop deur die Minister bepaal, 'n staat van sy geraamde inkomste en uitgawes gedurende die daaropvolgende boekjaar voorlê vir die Minister se goedkeuring [**verleen met die instemming van die Minister van Finansies**];
- (b) kan gedurende enige boekjaar op enige tydstop aanvullende state van sy geraamde uitgawes vir daardie boekjaar voorlê aan die Minister vir sy of haar goedkeuring [**in oorleg met die Minister van Finansies**];”.

Wysiging van artikel 9 van Wet 47 van 1996, soos gewysig deur artikel 5 van Wet 59 van 1997

4. Artikel 9 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:

“(d) kan die Raad enige instelling of liggaam van persone wat vir die doeleindes van die implementering of administrasie van 'n statutêre maatreef ingevolge artikel 14 aangewys is, gelas om die Raad van die inligting rakende 'n statutêre maatreef te voorsien wat die Raad of die Minister [**of die parlementêre komitees**] verlang;” en

Wysiging van artikel 10 van Wet 47 van 1996

5. Artikel 10 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- “(1) 'n Direk geaffekteerde groep [**of die parlementêre komitees**] kan die Minister skriftelik versoek om een of meer statutêre maatreëls in te stel, voort te sit, te wysig of te herroep.”.

Wysiging van artikel 13 van die Wet 47 van 1996

6. Artikel 13 van die Hoofwet word hierby gewysig deur die woorde wat die voorbehoudsbepaling by subartikel (1) voorafgaan deur die volgende woorde te vervang:

- “Die Minister kan, na oorweging van die Raad se aanbevelings, en onderworpe aan die bepalings van artikel 15, 'n statutêre maatreef by kennisgewing in die *Staatskoerant* instel, wysig of herroep, die aangeleentheid na die Raad vir verdere ondersoek terugverwys of enige optrede weerhou.”.

Wysiging van artikel 15 van Wet 47 van 1996, soos gewysig deur artikel 6 van Wet 59 van 1997

7. Artikel 15 van die Hoofwet word hierby gewysig deur—

- (a) subartikels (1), (2) en (3) te skrap; en
- (b) die volgende subartikels by te voeg:
 - “(5) Ondanks die bepalings van subartikel (4)—
 - (a) vorm enige heffing ingevorder, geadministreer of gehou deur enige persoon of liggaam kragtens hierdie Wet nie deel van die bates van daardie persoon of liggaam nie, en enige heffings wat in die besit van of onder die beheer van enige persoon of liggaam oorbly na die tydperk waarvoor sodanige heffings goedgekeur is, moet benut word op 'n wyse deur die Minister bepaal; en
 - (b) alle heffings moet afsonderlik van enige ander fondse of bates onder die beheer of in besit van sodanige persoon of liggaam verreken word op 'n wyse en in die mate wat die Ouditeur-generaal tevrede stel en moet op 'n jaarlikse grondslag deur die Ouditeur-generaal geouditeer word.
 - (6) Die bepalings van subartikel (5) word nie uitgelê om 'n werksaamheid van die Ouditeur-generaal ingevolge artikel 188 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996) aan te tas nie.”.

Substitution of section 22 of Act 47 of 1996

8. The following section is hereby substituted for section 22 of the principal Act:

“Prohibition of import and export of agricultural product

22. (1) In extraordinary circumstances and bearing in mind the Republic's international obligations, the Minister may, after consultation with the [parliamentary committees] Council, by notice in the *Gazette* prohibit the importation into the Republic of any agricultural product or class thereof, or the export of any agricultural product or class thereof from the Republic, or impose conditions, specified in such notice, with regard to any such importation or export.

(2) Before the Minister may impose a prohibition under subsection (1), the Council shall—

- (a) publish a notice setting out particulars of the proposed prohibition and an explanation in connection therewith in the *Gazette* and such magazines and newspapers as may be sufficient in order to bring the proposed prohibition to the attention of directly affected groups, and inviting such directly affected groups to lodge any objections or representations relating to the proposed prohibition within a specified time;
- (b) if necessary, appoint a committee in terms of section 7, which shall consider such objections or representations and advise the Council;
- (c) consider the objections and representations from, and level of support among, directly affected groups, and the advice of the committee, if applicable; and
- (d) report on its findings and make a recommendation to the Minister within 60 days of the publication of the notice contemplated in paragraph (a) or such longer period as may be approved by the Minister.”

Amendment of section 27 of Act 47 of 1996, as amended by section 12 of Act 59 of 1997

9. Section 27 of the principal Act is hereby amended—

- (a) by the deletion of subsections (2) and (3); and
- (b) by the addition of the following subsection:

“(4) (a) Levies that were collected or used under sections 46A and 84A of the Marketing Act, 1968 (Act No. 59 of 1968), after the repeal of that Act and before 28 February 1999, shall be deemed to have been collected or used under that Act as if that Act still applied.

(b) The Minister may, by notice in the *Gazette*, on the advice of the Council, authorise the transfer of funds originating from the collection of levies imposed under sections 46A and 84A of the Marketing Act, 1968, to a trust or trusts whose objectives are not inconsistent with the objectives mentioned in section 2.”.

Short title

10. This Act is called the Marketing of Agricultural Products Amendment Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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Wet No. 52, 2001

Vervanging van artikel 22 van Wet 47 van 1996

8. Artikel 22 van die Hoofwet word hierby deur die volgende artikel vervang:

“Verbod op invoer en uitvoer van landbouproduk

22. (1) Onder buitengewone omstandighede en in ag genome die Republiek se internasionale verpligtinge, kan die Minister na oorleg met die [parlementêre komitees] Raad, by kennisgewing in die *Staatskoerant* die invoer in die Republiek van 'n landbouproduk of 'n klas daarvan, of die uitvoer uit die Republiek van 'n landbouproduk of 'n klas daarvan, verbied, of voorwaardes in so 'n kennisgewing vermeld, oplê, met betrekking tot enige sodanige invoer of uitvoer.

(2) Alvorens die Minister 'n verbod kragtens subartikel (1) kan instel, moet die Raad—

- (a) 'n kennisgewing, waarin die besonderhede van die voorgestelde verbod en 'n verduideliking in verband daarmee uiteengesit word, in die *Staatskoerant* en die tydskrifte of nuusblaaie wat toereikend mag wees om die voorgestelde verbod onder die aandag van direk geaffekteerde groepe te bring, publiseer, en die direk geaffekteerde groepe uitnoodi om enige besware of verhoë aangaande die voorgestelde verbod binne 'n bepaalde tyd in te dien;
- (b) indien nodig, 'n komitee ingevolge artikel 7 aanstel, wat sodanige besware of verhoë oorweeg en die Raad adviseer;
- (c) die besware en verhoë van, en mate van steun deur, direk geaffekteerde groepe, en die advies van die komitee, indien toepaslik, oorweeg; en
- (d) binne 60 dae na die publikasie van die kennisgewing in paragraaf (a) beoog of die langer tydperk wat deur die Minister goedgekeur is, oor sy bevindings verslag doen en 'n aanbeveling aan die Minister doen.”

Wysiging van artikel 27 van Wet 47 van 1996, soos gewysig deur artikel 12 van Wet 59 van 1997

9. Artikel 27 van die Hoofwet word hierby gewysig—

- (a) deur subartikels (2) en (3) te skrap; en
- (b) deur die volgende subartikel by te voeg:

“(4) (a) Heffings wat ingevorder of gebruik is kragtens artikels 46A en 84A van die Bemarkingswet, 1968 (Wet No. 59 van 1968), na die herroeping van daardie Wet en voor 28 Februarie 1999, word geag kragtens daardie Wet ingevorder of gebruik te wees asof daardie Wet nog van toepassing was.

(b) Die Minister kan, by kennisgewing in die *Staatskoerant*, op advies van die Raad, die oordrag van fondse voortspruitend uit die invordering van heffings opgelê kragtens artikels 46A en 84A van die Bemarkingswet, 1968, na 'n trust of trusts waarvan die doelstellings nie onbestaanbaar is nie met die doelstellings in artikel 2 vermeld, magtig.”

Kort titel

10. Hierdie Wet heet die Wysigingswet op Bemarking van Landbouprodukte, 2001, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

