

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NO. 7232****13 March 2026****INVITATION FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS TO THE  
ANTI-DUMPING REGULATIONS**

I, Mpho Parks Tau, MP, Minister of Trade, Industry and Competition, in terms of section 59 of the International Trade Administration Act, 2002 (Act No. 71 of 2002), hereby publish for public comment proposed amendments to the Anti-Dumping Regulations.

The proposed amendments address substantive and procedural aspects of the existing regulatory framework. Substantively, the proposed amendments clarify the Commission's authority to self-initiate investigations, strengthen disciplines related to circumvention, and provide mechanisms for addressing distorted market conditions when determining normal value. The amendments also refine the approach to incomplete questionnaire responses at the preliminary stage of an investigation, reinforce the framework for injury analysis and expand provisions governing price undertakings and public-interest assessments.

Procedurally, the proposed amendments provide clearer standards governing reviews, including anti-circumvention, sunset, interim and new shipper reviews. The revisions also clarify provisions relating to the treatment of confidential information.

Interested persons are invited to submit written comments on the proposed amendments which must be submitted within four (4) weeks of the date of publication of this notice in the Government Gazette.

Written comments must be submitted by e-mail, clearly marked "Comments on Proposed Amendments to the Anti-Dumping Regulations" in the subject line and addressed to:

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The proposed amendments to the Anti-Dumping Regulations are published together with this notice and may also be obtained electronically upon request at the e-mail address provided above.



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**MINISTER OF TRADE, INDUSTRY AND COMPETITION**

**REPUBLIC OF SOUTH AFRICA**

**THE INTERNATIONAL TRADE  
ADMINISTRATION COMMISSION  
OF SOUTH AFRICA**

**AMENDED  
ANTI-DUMPING REGULATIONS**

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## REGULATIONS

### Part A - Definitions

#### 1. Definitions

**“amendment”** means the imposition of an anti-dumping duty or a modification of the rate, scope or conditions of an existing anti-dumping duty, including its termination, but does not include a determination made under Sub-Part VI clarifying whether a product falls within the product description set out in an existing anti-dumping measure.

**“Commission”** means the International Trade Administration Commission of South Africa established in terms of section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002).

**“Deadlines”** shall be interpreted as the final date for submissions, responses, comments and requests and the like as envisaged by the different sections of these Regulations, and shall be deemed to be at 15h00 South African standard time on the deadline indicated, unless expressly otherwise indicated.

**“Facts available”** means the information that is available to the Commission at the time of making a determination, whether preliminary or final, and which has been verified or is verifiable, provided that all requirements regarding non-confidentiality and timely submission have been met. In cases of non-cooperation by an exporter facts available may include, in any order –

- (a) For normal value:
  - (i) the prices of another seller or sellers in that market;
  - (ii) the information contained in the application; and/or
  - (iii) any other information at the Commission’s disposal.
- (b) For export prices:
  - (i) the information contained in the application;
  - (ii) the information contained in the import statistics as provided by the Commissioner for the South African Revenue Service; and/or
  - (iii) any other information at the Commission’s disposal.

provided the Commission has, where practicable, checked the information from other independent sources at its disposal.

**“Good cause”** for an extension of the submission of information means substantive reasons and does not include merely citing insufficient time to complete a response to the Commission’s questionnaires;

**“Interested parties”** may include known –

- (a) producers in SACU;
- (b) exporters;
- (c) foreign producers;

- (d) importers;
  - (e) trade or business associations whose members are SACU or foreign producers, exporters or importers; and/or
  - (f) the governments of the countries of origin and of export;
- of the product under investigation or the like product.

This does not preclude the Commission from accepting other parties as interested parties at the behest of the Commission in an anti-dumping investigation.

**“Investigation period for dumping”** is the period for which it is assessed whether dumping took place. This period shall normally be 12 months, and may be more, but in no case less than 6 months, and shall normally be a period ending not more than 6 months before the initiation of the investigation. The investigation period for dumping shall be clearly indicated in the initiation notice published in the *Government Gazette*.

**“Investigation period for injury”** is the period for which it is assessed whether the SACU industry experienced material injury. This period shall normally cover a period of three years plus information available on the current financial year at the date that the application was submitted, but may be determined by the Commission as a different period provided that the period is sufficient to allow for a fair investigation. The investigation period for injury shall be clearly indicated in the initiation notice published in the *Government Gazette*.

**“Like product”** means –

- (a) a product which is identical, i.e. alike in all respects to the product under consideration; or
- (b) in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

In determining whether the product has characteristics closely resembling those of the product under consideration the Commission may consider –

- (i) the raw materials and other inputs used in producing the products;
- (ii) the production process;
- (iii) physical characteristics and appearance of the product;
- (iv) the end-use of the product;
- (v) the substitutability of the product with the product under investigation;
- (vi) tariff classification; and/or
- (vii) any other factor proven to the satisfaction of the Commission to be relevant.

No one or several of these factors can necessarily give decisive guidance.

**“Main Act”** refers to the International Trade Administration Act, 2002 (Act No. 71 of 2002).

**“Margin of dumping”** is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes.

**“Material injury”**, unless the opposite is clear from the context, refers to actual material injury, a threat of material injury or the material retardation of the establishment of an industry.

**“Minister”** means the member of the Cabinet, which body is referred to in section 91 of the Constitution, responsible for trade, industry and competition.

**“Price depression”** takes place where the SACU industry’s ex-factory selling price decreases during the investigation period.

**“Price disadvantage”** is the extent to which the price of the imported product is lower than the unsuppressed selling price of the like product produced by the SACU industry, as measured at the appropriate point of comparison.

**“Price suppression”** takes place where the cost-to-price-ratio of the SACU industry increases, or where the SACU industry sells at a loss, during the investigation period or part thereof.

**“Price undercutting”** is the extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry, as measured at the appropriate point of comparison.

**“Product under investigation”** means the imported product, including the product under consideration, which is subject to an investigation by the Commission by virtue of having been cleared for home use or cleared by means of another customs procedure that provides for the processing of the product in the SACU.

**“Related parties”** are parties deemed to be related for purposes of an anti-dumping investigation, and sales may be considered not to be at arm’s length, if –

- (a) one directly or indirectly owns, controls or holds five per cent or more of the equity shares of the other;
- (b) one has the power to directly or indirectly nominate or appoint a director to the management of the other;
- (c) one is an officer or director of the other’s business;
- (d) they are legally recognised partners in business;
- (e) one is employed by the other;
- (f) they are both directly or indirectly controlled by a third person;



- (g) together they directly or indirectly control a third person;
- (h) they appear to be related by virtue of their conduct;
- (i) they are blood relatives or are related by marriage, common-law partnership or adoption; or
- (j) if their relationship is otherwise of such a nature that trade between them cannot be regarded to be at arm's length.

**“SACU”** means the Southern African Customs Union.

**“SACU industry”** means the domestic producers in the SACU as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

**“unsuppressed selling price”** is the price at which the SACU industry would have been able to sell the like products in question in the absence of dumping, and can be determined with reference to –

- (a) the expected or required return of the SACU industry for the like or similar products; or
- (b) the profit margins of the industry for the like products before the entry of the dumped imports; or
- (c) the prices obtained for the like products by the industry directly before the entry of the dumped imports; or
- (d) any other reasonable basis.

## **Part B - General Provisions**

### **2. Confidentiality**

2.1 A person may, when submitting correspondence to the Commission identify information therein that the person claims is –

- (a) by nature confidential; or
- (b) otherwise to be recognised as confidential.

2.2 Parties providing confidential information in any correspondence for which a claim of confidentiality is made as contemplated in subsection 1 shall at the same time furnish non-confidential summaries thereof. These summaries shall–

- (a) indicate in each instance where confidential information has been omitted and the reasons why the omitted information is confidential; and
- (b) be in sufficient detail to permit other interested parties a reasonable understanding of the substance of the information submitted in confidence.

- 2.3 Where information does not permit non-confidential summarisation, a sworn statement shall be provided explaining why the confidential information cannot be summarised. Merely reciting that the confidential information is of a kind listed in subsection 4 is not sufficient in this regard.
- 2.4 The following list provides examples of “information that is by nature confidential” as per sections 1(2) and 33(1)(a) of the *Main Act*, read with section 36 of the *Promotion of Access to Information Act*, 2000 (Act 2 of 2000):
- (a) management accounts;
  - (b) financial accounts of a private company;
  - (c) actual and individual sales prices;
  - (d) actual costs, including cost of production and importation cost;
  - (e) actual sales volumes;
  - (f) information, the release of which could have serious consequences for the person that provided such information; and
  - (g) information that would be of significant competitive advantage to a competitor;
- provided that the party submitting such information indicates it to be confidential.
- 2.5 All correspondence not clearly indicated to be confidential shall be treated as non-confidential.
- 2.6 If a person makes a claim in terms of subsection 1, the Commission shall determine whether the information is confidential as provided for in section 34 of the *Main Act*.
- 2.7 Notwithstanding subsection 4, the Commission may disregard any information indicated to be confidential that –
- (a) it does not determine to be confidential in terms of subsection 6; or
  - (b) is not accompanied by –
    - (i) a proper non-confidential summary in terms of subsection 2;  
or
    - (ii) a sworn statement as contemplated in subsection 3; and
- the deficiency has not been addressed in accordance with the instructions of the Commission.
- 2.8 In determining whether to disregard information indicated to be confidential where the requirement in subsection 7(b)(i) has not been met, the Commission exercises its discretion considering, amongst others, whether the deficiency is of such a nature as to materially affect the ability of other interested parties to defend their interests.

### 3. Investigations

- 3.1 An original anti-dumping investigation shall only be initiated upon the Commission's acceptance of a written application by or on behalf of the SACU industry containing *prima facie* evidence of dumping, injury and a causal link between the dumped imports and the injury, except as provided for in subsections 3 and 4.
- 3.2 An interim, new shipper, sunset or anti-circumvention review shall be initiated upon the Commission's acceptance of a written application by or on behalf of an interested party containing the *prima facie* evidence required by the relevant provisions of these regulations, except as provided for in subsection 3.
- 3.3 The Commission may initiate an original investigation mentioned in subsections 1 and 4 or a review mentioned in subsection 2 without having received a written application from the relevant interested party. In such cases the Commission shall proceed only if it has the requisite *prima facie* evidence. A non-confidential version of the information that served as the basis for the initiation shall be made available to all known interested parties.
- 3.4 The Commission may initiate an original investigation against one or more exporters or producers of a product that is subject to an anti-dumping duty, but which are not themselves subject to the anti-dumping duty –
- (a) based on a written application by or on behalf of the SACU industry containing *prima facie* evidence of dumping, injury and a causal link between the dumped imports and the injury; or
  - (b) without having received a written application if the Commission has *prima facie* evidence of dumping, injury and a causal link between the dumped imports and the injury.
- 3.5 The Commission may initiate a surveillance investigation as a monitoring measure to collect information on the importation of products. The purpose of such an investigation is to enable the Commission to assess trends in import volumes, prices, and other relevant indicators to determine whether there is sufficient evidence of injurious dumping to justify the initiation of an original investigation.

### 4. Cumulation

- 4.1 The Commission may cumulatively assess the effects of the dumped imports from two or more countries, which are simultaneously subject to an anti-dumping investigation only if it finds that –
- (a) the margin of dumping is two per cent or more, when expressed as a percentage of the export price in relation to the imports from each country to be cumulated;
  - (b) the volume of imports from each country is not negligible; and

- (c) a cumulative assessment of the effects of the dumped imports is appropriate in light of –
  - (i) the conditions of competition between the imported products from the different countries; and
  - (ii) the conditions of competition between the imported products and the SACU like product.
- 4.2 The volume of dumped imports from a country shall normally be regarded as negligible if the volume is found to account for less than three per cent of the total imports of the like product into the SACU, unless countries which individually account for less than 3 per cent of the total imports of the like product into the SACU collectively account for more than 7 per cent of the total imports of the like product into the SACU.

## **5 Representation**

- 5.1 Should any of the interested parties wish to be represented by an outside party in an investigation or a review, the interested party must provide the Commission with a letter of appointment of its representative, detailing the identity of the representative and the scope and duration of the representation.
- 5.2 Should any interested party wish to terminate a representation indicated in subsection 1, such party must provide the Commission with a letter to this effect.
- 5.3 Once an interested party has appointed a representative all communication between the Commission and the interested party will take place through the appointed representative.

## **6 Oral hearings**

- 6.1 Any interested party may request an oral hearing during the preliminary and/or final investigation phases of an investigation, provided the party indicates reasons for not relying on written submissions only. The Commission may refuse an oral hearing if granting such hearing will unduly delay the finalisation of a preliminary or final determination.
- 6.2 No request for an oral hearing will be considered more than 60 days, and no oral hearing will be heard more than 90 days, after the publication of the Commission's preliminary finding.
- 6.3 All information presented during an oral hearing shall be reduced to writing and a non-confidential version will be placed on the public file. Parties requesting an oral hearing shall provide the Commission with a detailed agenda for, and a detailed version, including a non-confidential version of the information to be discussed at the oral hearing at the time of the request.
- 6.4 The Commission may limit the duration of the oral hearing. Any such limitation must be communicated to the party requesting a hearing at the same time that the Commission indicates the date for such hearing.

- 6.5 The Commission may limit or add to the agenda contemplated in subsection 4.

## **7 Adverse party meetings**

- 7.1 Any interested party may request an adverse party meeting during the preliminary and/or final investigation phases of an investigation, provided the party indicates reasons for not relying on written submissions only. The Commission may refuse an adverse party meeting if granting such meeting will unduly delay the finalisation of a preliminary or final determination.
- 7.2 No request for an adverse party meeting will be considered more than 60 days, and no adverse party meeting will be held more than 90 days, after the publication of the Commission's preliminary finding.
- 7.3 During the preliminary investigation phase SACU producers may request an adverse party meeting within 7 days after they have been supplied with opposing parties' responses.
- 7.4 All interested parties that have cooperated during the investigation shall be invited to attend the adverse party meeting. All parties so invited shall be granted 7 days to indicate whether they will attend the adverse party meeting.
- 7.5 All information presented during an adverse party meeting shall be reduced to writing and a non-confidential version will be placed on the public file.
- 7.6 Parties requesting an adverse party meeting shall provide the Commission with a detailed agenda for and a detailed version, including non-confidential version, of the information to be discussed at the adverse party meeting at the time of the request. The Commission will make the agenda available to other interested parties for comments and additions. The Commission will make the final agenda available in advance to all parties attending the adverse party meeting at least 7 days prior to such meeting taking place.
- 7.7 The Commission may limit or add to the topics to be covered during the oral hearing and may structure the meeting as it deems efficient.
- 7.8 The Commission may limit the duration of the adverse party. Any such limitation must be communicated to all parties attending the meeting when the date for the meeting is finalised.
- 7.9 In adverse parties meetings account shall be taken of the need to preserve confidentiality and of convenience to the parties. Confidential information may be submitted in camera, but a non-confidential version of such confidential information shall be made available to other interested parties.
- 7.10 There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.

## 8 Computation of periods of time

Computation of any period of time provided for in these regulations commences with the first day following the act, event or date initiating such period of time. The last day of the period of time is included in the computation unless such day is a Saturday, Sunday, public holiday or such other day when the Commission is closed for business, in which case the deadline will be the next business day.

## 9 Additional information

The Commission may request or gather information at any stage before or after initiation of an investigation.

### Part C - Procedures

#### Sub-Part I - General

## 10 SACU industry

10.1 Other than investigations initiated in terms of section 3.3 or 3.4, any application for anti-dumping action shall be brought by or on behalf of the SACU industry.

10.2 Where a SACU producer is –

- (a) related to the importer, exporter or the foreign producer; or
- (b) itself an importer of the products under investigation,

the term “SACU industry” may be interpreted as referring to the rest of the SACU producers.

10.3 An application shall be regarded as brought by or on behalf of the SACU industry if –

- (a) at least 25 per cent of the SACU producers by domestic production volume support the application; and
- (b) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application.

10.4 In the case of industries involving an exceptionally large number of producers, the Commission may determine support and opposition by reference to the largest number of producers that can be reasonably included in the investigation or by using statistically valid sampling techniques based on the information available to the Commission at the time of its finding.

10.5 If a SACU producer withdraws the application or its support thereof after the investigation has been initiated, the Commission may –

- (a) terminate the investigation; or

- (b) disregard the withdrawal of support and continue with its investigation as if all requirements in subsections 1, 2 and 3 have been met.

## 11 Normal value

11.1 “Normal value” as defined in section 32(2)(b)(i) of the *Main Act* shall be interpreted to mean –

- (a) the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export or the country of origin by the exporter, the producer or its related party under investigation; or
- (b) where such price is not known, the price at which such like goods are sold on the same market by another seller or sellers in that market.

11.2 When there are no domestic sales or an insufficient volume of sales of the like goods in the ordinary course of trade, or when such sales do not permit a proper comparison, the normal value of the like goods shall be based on–

- (a) the constructed cost of production of the like goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
- (b) export prices in the ordinary course of trade of the like goods from the country of origin to an appropriate third country, as long as that price is representative.

11.3 Domestic sales or export sales to a third country may be considered to be not in the ordinary course of trade or not permitting a proper comparison if the Commission determines that, as appropriate –

- (a) such sales took place at prices below total costs, including cost of production and administrative, selling and general costs, provided such sales took place
  - (i) in substantial quantities equalling at least 20 per cent by volume of total domestic sales during the investigation period; and
  - (ii) over an extended period of time, which period shall normally be a year, but in no case less than 6 months;
- (b) such sales were made to a related party;
- (c) such sales do not reflect normal commercial quantities, or
- (d) a proper comparison is not possible because of –
  - (i) distortions in the price of inputs used to produce the like goods;

- (ii) the sales prices of the like goods that do not reasonably reflect the costs associated with their production and/or sale;
  - (iii) government interventions, such as import and export controls, export tax or support programmes; or
  - (iv) any other circumstance in which normal market conditions do not exist.
- 11.4 Domestic or third country sales of the like product shall normally be considered a sufficient volume to determine a normal value if such sales constitute five per cent or more of the sales volume of the product to the SACU. Sales representing less than 5 per cent of export sales to the SACU may nevertheless be deemed sufficient where such sales are of sufficient magnitude to provide for a proper comparison.
- 11.5 In choosing the third country contemplated in subsection 2(b), the Commission may consider any relevant factor, including any or all of the following factors, with no one or several of these factors necessarily giving decisive guidance:
  - (a) the similarity of the like product exported from the country of origin to the third country and the product exported to the SACU in terms of the criteria used by the Commission in its like product analysis;
  - (b) the similarity in the volumes of the like product exported from the country of origin to the third country and the volumes of the like product exported to the SACU;
  - (c) whether the sales of the like product to the third country are at the same level of trade as sales of the like product to the SACU; and
  - (d) whether the third country has a domestic industry that manufactures the like product.
- 11.6 Where the products are not shipped directly from the country of origin but are exported to the SACU from an intermediate country, the price at which the products are sold from the country of origin or export for shipment to the SACU may be compared with the comparable price in the country of export or of origin.
- 11.7 Exports may be deemed to originate in the country indicated –
  - (a) on the certificate of origin; and/or
  - (b) on the bills of entry; and/or
  - (c) in the import statistics provided by the Commissioner for the South African Revenue Service.
- 11.8 If the Commission constructs the normal value, as contemplated in subsection 2(a), it may do so on any reasonable basis, including, but not limited to –
  - (a) the cost of the producer or exporter concerned;



- (b) the cost of another producer or producers in the same country;
  - (c) the information contained in the application; or
  - (d) any other information at the Commission's disposal.
- 11.9 When the Commission constructs a normal value the cost build-up shall include –
- (a) production costs;
  - (b) overheads;
  - (c) selling, general and administrative costs;
  - (d) any other costs deemed necessary by the Commission to compare the constructed normal value to the export price; and
  - (e) a reasonable profit.
- 11.10 The constructed normal value in subsection 9 shall normally be constructed using the producer's own costs and profit, provided that such costs –
- (a) are undistorted;
  - (b) reflect the actual costs of the product;
  - (c) are Generally Accepted Accounting Practice (GAAP) consistent; and
  - (d) are historically based.
- 11.11 The selling, general and administrative costs contemplated in subsection 9 shall be determined –
- (a) with reference to the product under investigation; or
  - (b) in the absence of information in terms of paragraph (a) –
    - (i) with reference to the average such expenses incurred by other sellers in that market; or
    - (ii) with reference to the narrowest range of products that can be identified; or
    - (iii) on any other reasonable basis.
- 11.12 The reasonable profit margin that is included in the constructed normal value shall normally be determined –
- (a) with reference to the actual profit realised on sales of the product under investigation; or
  - (b) with reference to the actual profit realised on sales of the narrowest range of products that can be identified; or
  - (c) with reference to the average such actual profit realised by other sellers on sales of the same category of products in that market if the profit margin cannot be properly isolated from the information kept by the producer under investigation; or

- (d) on any other reasonable basis;

provided that the profit so included shall normally be based on the actual profit realised on sales before extraordinary items, interest, tax and any other circumstances that may affect such profit margin.

## **12 Related foreign market producers and resellers**

12.1 Where the foreign producer sells the like product on its domestic market through a related party –

- (a) the normal value shall be determined as the resale price to the first independent buyer, provided the adjustments as envisaged in section 32(3) of the *Main Act* should still be made;
- (b) where such product is not subsequently resold or not resold in the condition sold to that related party, the normal value shall be determined –
  - (i) with reference to sales to independent buyers only; or
  - (ii) where there are no such sales to independent buyers, on any other reasonable basis.

12.2 Where a party has domestic sales both through related and unrelated parties, the Commission may decide to use only those sales to unrelated parties.

## **13 Export price**

“Export price” has the meaning as provided for in section 32(2)(a) of the *Main Act*.

## **14 Constructed export price**

14.1 Where –

- (a) there is no export price at the time of importation;
- (b) the exporter or the foreign producer and the importer are related;
- (c) the invoiced export price appears to be unreliable for any other reason; or
- (d) exports were not in commercial quantities;

the export price may be constructed from the first point of resale to an independent buyer, or if the imported goods are not resold to an independent buyer or are not sold in the condition in which imported, on any reasonable basis determined by the Commission.

14.2 In constructing such export price the Commission shall deduct –

- (a) all costs between the exporter and the importer; and

(b) a reasonable profit.

14.3 The reasonable profit contemplated in subsection 2(b) may be determined by calculating –

- (a) the total costs, including the cost of production and administrative, selling and general costs of the producer/exporter with reference to the product under investigation;
- (b) the total costs, including the cost of production and administrative, selling and general costs of the importer with reference to the product under investigation, including all costs from the ex-factory export point of the producer; and
- (c) the total profit with reference to the product under investigation realised by both the foreign producer/exporter and the importer;

and by allocating the profit in the same ratio as the total costs incurred by the two parties.

14.4 In the event that –

- (a) the imported product is not resold;
  - (b) is not resold in the same condition as imported; or
  - (c) where information on the resale price is not available,
- the export price may be constructed on any reasonable basis.

## **15 Comparison of normal value and export price**

15.1 Adjustments shall be made in each case, on its merit, for differences which affect price comparability at the time of setting prices, including, but not limited to –

- (a) conditions and terms of trade;
- (b) taxation;
- (c) levels of trade;
- (d) physical characteristics; and
- (e) quantities.

15.2 Adjustments should be requested in interested parties' original response to the relevant questionnaires and must be –

- (a) substantiated;
- (b) verifiable;

- (c) directly related to the sale under consideration; and
  - (d) clearly demonstrated to have affected price comparability at the time of setting prices.
- 15.3 The comparison between the normal value and the export price shall normally be made at the ex-factory level and between sales at the same level of trade, e.g. at distributor, wholesale or retail level.
- 15.4 The comparison shall normally be made at the same terms of trade, including packaging, terms of delivery and payment terms.
- 15.5 The comparison between the normal value and the export price shall normally be made on a weighted average to weighted average basis, but may be made on a transaction-by-transaction basis should the circumstances require such comparison.
- 15.6 A normal value established on a weighted average basis may be compared to prices of individual export transactions if the Commission finds a pattern of export prices which differs significantly among different purchasers, regions or time periods.
- 15.7 In cases where the Commission has determined the margin of dumping as contemplated in subsection 6, it shall indicate reasons for its decision in all subsequent reports.

## **16 Margin of dumping**

- 16.1 The Commission shall normally calculate an individual margin of dumping for each exporter or producer that submitted a complete and non-deficient response to the Commission's questionnaire within the relevant deadline.
- 16.2 In cases where only one product is under investigation, the margin of dumping shall be determined as the amount by which the normal value exceeds the export price.
- 16.3 In cases where more than one product is under investigation, the Commission shall normally determine the margin of dumping as follows:
- (a) in the case of products that can be separately identified by the South African Revenue Service, a separate margin of dumping shall be calculated for each product; or
  - (b) in the case of products that cannot be separately identified by the South African Revenue Service, the Commission shall normally –
    - (i) calculate the margin of dumping for each product separately; and
    - (ii) determine the weighted average margin of dumping for all products by weighting each margin of dumping calculated on the basis of the individual export volume of each product in relation to the total export volumes of such products.

- 16.4 The margin of dumping shall be regarded as *de minimis* if it is less than two per cent when expressed as a percentage of the export price.
- 16.5 The Commission shall calculate a residual margin of dumping for all exporters or producers for which individual margins of dumping have not been calculated in terms of subsection 1 and which are from the same country or customs union.
- 16.6 In the case of industries where the number of producers, exporters, importers or types of products, whether from one or more countries, including a customs union, is so large as to make a determination of individual dumping margins impracticable, the investigation may be limited to a reasonable number of parties or types of products by using –
- (a) the largest representative volume of exports from the country or countries in question which can reasonably be investigated; or
  - (b) samples that are statistically representative on the basis of the information available to the Commission at the time of the selection.
- 16.7 If the Commission decides to limit its investigations as contemplated in subsection 6, it may consult with the relevant parties prior to its selection of parties and/or types of products with a view to obtaining the agreement of the parties. Notwithstanding any consultation, the final selection shall rest with the Commission.
- 16.8 In cases where the Commission has limited its investigation as contemplated in subsection 6, the Commission will nevertheless determine an individual margin of dumping for any producer or exporter not included in the sample who submits the necessary information in time for that information to be considered along with the information of producers or exporters selected, except where the number of producers or exporters is so large that individual examinations would be unduly burdensome to the Commission.

## 17 Material injury

- 17.1 In determining material injury to the SACU industry, the Commission shall examine –
- (a) the volume of the dumped imports and the effect of the dumped imports on prices in the SACU for the like product; and
  - (b) the consequent impact of the dumped imports on the SACU industry.
- 17.2 In determining material injury to the SACU industry in terms of subsection 1(a), the Commission shall consider –
- (a) with regard to the volume of the dumped imports, whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the SACU; and

(b) with regard to the effect of the dumped imports on prices, whether there has been significant –

- (i) price undercutting;
- (ii) price depression; or
- (iii) price suppression;

with no one or several of these factors necessarily giving decisive guidance.

17.3 In its determination of material injury to the SACU industry in terms of subsection 1(b), the Commission shall further consider all relevant economic factors and indices having a bearing on the state of the SACU industry, including –

- (a) sales volume;
- (b) profit and loss;
- (c) output;
- (d) market share;
- (e) productivity;
- (f) return on investments;
- (g) capacity utilisation;
- (h) the margin of dumping;
- (i) factors affecting domestic prices;
- (j) cash flow;
- (k) inventories;
- (l) employment;
- (m) wages;
- (n) growth;
- (o) ability to raise capital or investments; and
- (p) any other relevant factors placed before the Commission.

This list of factors is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

17.4 The Commission may require any additional information on injury from the SACU industry at any stage during an investigation.

- 17.5 Each of the factors mentioned in subsections 1 and 2 shall be considered for the product under investigation only or, where such analysis is not possible, for the narrowest group of products for which such analysis can be made. Only if no such information is available will the Commission consider the information for the company as a whole, and then with special circumspection.

## **18 Threat of material injury**

- 18.1 A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which dumping would cause material injury must be clearly foreseen and imminent.
- 18.2 In considering a threat of material injury the Commission shall, in addition to the factors indicated under section 17, and where relevant information is available, consider such factors as:
- (a) a significant rate of increase of dumped imports into the domestic market of the SACU;
  - (b) sufficiently freely available, or an imminent substantial increase in, capacity of the exporter;
  - (c) the availability of other export markets to absorb additional export volumes;
  - (d) whether products are entering or will be entering the SACU market at prices that will have a significant depressing or suppressing effect on SACU prices; and
  - (e) the exporter's inventories of the product under investigation.

## **19 Material retardation of the establishment of an industry**

- 19.1 No investigation shall be initiated on the basis of the material retardation of the establishment of an industry unless the industry or proposed industry has supplied the Commission with a comprehensive business plan indicating the establishment of such industry in the absence of dumping.
- 19.2 The Commission may request a provisional payment or recommend an anti-dumping duty where the establishment of such industry is materially retarded by dumped imports.
- 19.3 If significant progress has not been made to establish an industry as proposed in subsection 2 within one year following the imposition of an anti-dumping duty, the Commission may recommend that the anti-dumping duty be withdrawn.

## 20 Causality

- 20.1 The Commission shall determine whether dumped imports are, through the effects of dumping, causing material injury to a SACU industry, a threat of material injury to a SACU industry or the material retardation of the establishment of a SACU industry.
- 20.2 In considering whether there is a causal link between the dumping and the material injury the Commission shall consider all relevant factors, including, but not limited to:
- (a) the change in the volume of dumped imports, whether absolute or relative to the production or consumption in the SACU market;
  - (b) the price undercutting experienced by the SACU industry vis-à-vis the imported products;
  - (c) the market share of the dumped imports;
  - (d) the magnitude of the margin of dumping; and
  - (e) the price of undumped imports available in the market.
- 20.3 The Commission shall consider all relevant factors other than dumping that may have contributed to the SACU industry's injury and the injury caused by such other factors shall not be attributed to the dumping provided that an interested party has submitted, or the Commission otherwise has, information on such factor or factors. Factors that may be relevant in this respect include, but are not limited to –
- (a) the volume and prices of imports not sold at dumped prices;
  - (b) contraction in demand or changes in the patterns of consumption;
  - (c) trade restrictive practices of and competition between the foreign and SACU producers;
  - (d) developments in technology;
  - (e) other factors affecting the SACU prices;
  - (f) the SACU industry's export performance; and
  - (g) the productivity of the SACU industry.

## 21 Lesser duty rule

The Commission shall consider applying the lesser duty rule in every original investigation. The Commission may apply the lesser duty rule if both the corresponding importer and exporter or foreign producer have cooperated fully. In determining if the lesser duty is sufficient to remove the injury to the SACU industry, the Commission may consider any relevant factor.



## 22 Verifications and non-cooperation

- 22.1 The Commission shall satisfy itself as to the accuracy and adequacy of the information supplied by interested parties.
- 22.2 The Commission may conduct verifications, including desk top verifications and verifications at the SACU producers and at importers, exporters and foreign producers and other interested parties, as it may deem necessary.
- 22.3 In the event that an importer, exporter or foreign producer refuses to receive a verification visit by the Commission, refuses the Commission access to relevant information, fails to provide information within the period stipulated by the Commission or these Regulations, provides false or misleading information or acts so as to significantly impede the investigation, the Commission may disregard the information submitted by that party and resort to the facts available.
- 22.4 Where a party –
- (a) fails to supply relevant substantiating evidence required by investigating officers during a verification;
  - (b) fails to explain any calculations contained in its submissions; or
  - (c) otherwise fails to cooperate during the investigation process;
- the Commission may terminate the verification proceedings and the Commission may disregard any or all information submitted by the party in question and resort to the facts available. The Commission may nevertheless consider information that was properly submitted and verified.
- 22.5 The Commission shall inform the government of the country concerned of the dates of the intended verification visit and shall conduct the verification on those dates unless that government objects to the verification.
- 22.6 Where the government of the country concerned objects to the Commission's verification, the Commission may make a preliminary or final finding based on the facts available, and may exclude any information submitted by any party in that country.

## 23 Verification reports

- 23.1 Following an exporter or foreign producer verification, the Commission shall make a verification report indicating the information verified available to the party that was verified.
- 23.2 The purpose of a verification report related to an examination of information submitted by an interested party is to convey to the party verified what was verified during the Commission's verification. The failure to reference in

the verification report information that was verified shall not preclude the Commission from using such information in its findings.

- 23.3 The Commission will place a copy of the non-confidential verification report on the public file after the deadline for comments by the verified party.
- 23.4 Parties will receive 7 days to comment on the verification report. The Commission may grant an extension upon good cause shown.
- 23.5 Upon receipt of a written request prior to the deadline contemplated in subsection 4, the Commission may grant the party verified an extension on good cause shown.

## **24 Deadlines**

All investigations and reviews shall be finalised within 18 months after initiation.

## **Sub-Part II - Pre-Initiation and Initiation Procedures**

### **25 Applications**

- 25.1 Written applications shall be made by or on behalf of the SACU industry using the Commission's relevant questionnaire.
- 25.2 On receipt of an application the Commission's trade remedies unit shall liaise with the SACU industry to ensure that all required information has been submitted in the required format.

### **26 Properly documented application**

- 26.1 In determining whether an application submitted in terms of section 25 constitutes a properly documented application the Commission shall determine whether the application includes such information as is reasonably available to the applicant relating to the prescribed information.
- 26.2 The Commission will return all applications that are not properly completed to the applicant.

### **27 Normal value standard for initiation purposes**

- 27.1 The applicant shall submit such information as is reasonably available on the price for the like product sold in the country of origin or of export.
- 27.2 For the purpose of subsection 1 an invoice indicating the price, quotes for domestic sales of the like product, price lists, international publications or any other reasonable proof of such domestic price shall be considered.
- 27.3 If a price as indicated in subsection 1 is not available at the same level of trade as for export purposes, the application shall indicate reasonable

adjustments to allow the Commission to compare the submitted normal value and the submitted export price.

27.4 If the domestic selling price as contemplated in subsection 1 is not reasonably available to the applicant, the applicant shall state its efforts to obtain such price. If the applicant is unsuccessful after having undertaken reasonable efforts to obtain a domestic price as contemplated in subsection 1, the applicant may submit information in respect of normal value –

- (a) by constructing such value; or
- (b) with reference to the export price from the exporting country or country of origin to any third country.

27.5 Where the applicant supplies a constructed cost in terms of subsection 4(a), such constructed cost shall separately indicate –

- (a) direct costs;
- (b) indirect costs;
- (c) selling, general and administrative costs; and
- (d) profit;

and shall be more detailed where possible. Without placing an undue burden on the applicant, direct and indirect costs should be substantiated with relevant publications or other information. Selling, general and administrative costs and profit may be based on reasonable assumptions.

27.6 The applicant may supply the export price of the country under consideration as contained in the export statistics of that country or any other reasonable proof of export prices from that country to another country to substantiate a normal value in terms of subsection 4(b).

## **28 Export price standard for initiation purposes**

28.1 The applicant shall submit such information as is reasonably available on the price for the product under investigation when sold for export from the country of origin to SACU.

28.2 For the purpose of subsection 1, an applicant may provide the Commission with the price as contained in the import statistics of the South African Revenue Service, an invoice indicating the price or any other reasonable proof of such price.

28.3 In the case of a sunset review, where there were no exports to the SACU during the period of investigation, an applicant may for the determination of the export price provide the Commission with the comparable price of the like product when exported from the country of origin to a third country.

## **29 Material injury standard for initiation purposes**

In determining material injury to a SACU industry the Commission shall consider whether the information submitted in this regard and relating to the factors listed in section 17 indicates a *prima facie* case of material injury.

## **30 SACU industry verification**

The Commission shall satisfy itself of the accuracy and adequacy of the information provided in the application. Deficiencies or inaccuracies that do not detract from the *prima facie* establishment of a case of injurious dumping shall not result in any delay in initiating an investigation.

## **31 Merit Assessment**

- 31.1 In its merit assessment the Commission shall determine whether there is sufficient information to establish a *prima facie* case that dumping is causing material injury to the SACU industry.
- 31.2 In the event that the Commission makes a negative merit assessment, it shall inform the applicant concerned accordingly and supply it with a full set of reasons for its decision.

## **32 Notification**

- 32.1 The Commission shall notify the representative of the country of origin and of export, where applicable, that it has received a properly documented application in terms of section 26, after verification of the SACU industry's injury information, but prior to initiation.
- 32.2 Except as provided for in subsection 1, the Commission shall not publicise the application prior to the initiation of an investigation.
- 32.3 Wherever practicable, all known interested parties shall be supplied with a non-confidential version of the application once the initiation notice has appeared in the *Government Gazette*, as provided for in section 33.

## **33 Initiation**

- 33.1 An investigation shall be formally initiated through publication of an initiation notice in the *Government Gazette*.
- 33.2 The initiation notice shall contain the basis of the alleged dumping, material injury and causality, and shall also indicate at least the following:
  - (a) the identity of the applicant;
  - (b) a detailed description of the product under investigation, including the tariff subheading applicable to the product;
  - (c) the country or countries under investigation;

- (d) the basis of the allegation of dumping;
  - (e) a summary of the factors on which the allegation of injury is based;
  - (f) the address to which representations by interested parties should be directed; and
  - (g) the time frame for responses by interested parties.
- 33.3 If the Commission, during its investigation, finds that the subject product is imported under a tariff subheading not initially indicated to be in the scope of the investigation, it may include the imports of such subject product in its injury analysis.
- 33.4 All interested parties shall be deemed to have received notice of the investigation once it has been duly initiated in terms of subsection 1 and no extension for deadlines shall be considered on the basis of ignorance of the investigation.
- 33.5 The Commission shall inform all known interested parties of the initiation of the investigation and supply them with all relevant documentation, unless the number of interested parties makes it impracticable.

### **Sub-Part III - Preliminary Investigation Phase**

#### **34 Responses by interested parties**

- 34.1 Importers, exporters and foreign producers are required to use the relevant Commission questionnaires in their responses to the Commission.
- 34.2 Parties shall be deemed to have received the questionnaires 7 days after the dispatch of the questionnaires by the Commission.
- 34.3 From receipt of the questionnaires, as contemplated in subsection 2, parties shall receive 30 days to submit their responses to the Commission. Such responses must reach the Commission's trade remedies unit before 15h00 on the date indicated.
- 34.4 The deadline for submission by parties not directly informed of the investigation by the Commission will be 40 days from the date of the initiation of such investigation in the *Government Gazette*.
- 34.5 All submissions shall be made in an electronic format determined by the Commission. Failure to comply with this provision may result in the submission being regarded as deficient.

#### **35 Extensions for submissions**

- 35.1 Upon receipt of a written request prior to the applicable deadline, the Commission may grant parties an extension on good cause shown.

- 35.2 Any extension granted in terms of subsection 1 will apply only to the firm to which such extension was granted, and will not apply to other interested parties.

### **36 Deficiencies**

- 36.1 Submissions may be deemed deficient –
- (a) If any relevant information has not been submitted;
  - (b) If a proper non-confidential version of the submission as contemplated in section 2.2, or a sworn statement as contemplated in section 2.3, has not been submitted; or
  - (c) In the circumstances contemplated in section 34.5.
- 36.2 Parties will receive 7 days from the date of the Commission's deficiency letter to address any deficiencies pointed out by the Commission in terms of subsection 1.
- 36.3 The Commission will not consider submissions that are deficient after the deadline contemplated in subsection 2 for the purpose of its preliminary and final findings.
- 36.4 Exporters or producers whose submissions are not considered by the Commission in terms of subsection 3 will be subject to a residual duty as provided for in section 16.5.

### **37 Provisional measures**

- 37.1 Provisional measures may not be imposed within less than 60 days after initiation of an investigation.
- 37.2 Provisional measures will normally be imposed for a period of six months.
- 37.3 The validity of provisional payments may be extended to nine months on request of any interested exporter.

### **38 Preliminary report**

- 38.1 The Commission shall make available a non-confidential report within seven days of the publication of its preliminary finding.
- 38.2 The preliminary report shall contain at least the following information:
- (a) identity of the applicant;
  - (b) a full description of the product under investigation;
  - (c) date of the Commission's decision to initiate the investigation;
  - (d) initiation date and notice number;

- (e) date of the Commission's preliminary findings on dumping and injury;
- (f) the margin of dumping;
- (g) the methodology used by the Commission to determine the margin of dumping;
- (h) the injury factors considered;
- (i) the causality factors considered;
- (j) the Commission's finding; and
- (k) while preserving the requirements of confidentiality, all relevant issues of fact and law considered by the Commission in reaching its preliminary determination.

#### **Sub-Part IV - Final Investigation Phase**

##### **39 Comments on preliminary report**

- 39.1 All interested parties shall receive 14 days, from the date the preliminary report is made available, to comment in writing.
- 39.2 The Commission may grant parties an extension on good cause shown.
- 39.3 Any request for an extension to the deadline contemplated in subsections 1 and 2 shall be requested in writing at least 7 days prior to such deadline and shall contain a proper motivation for the request.
- 39.4 Any extension granted in terms of subsection 2 will apply only to the party to which such extension was granted, and will not apply to other interested parties.
- 39.5 The Commission will not accept new information from an interested party to address deficiencies in its questionnaire response following its preliminary finding.

##### **40 Essential facts**

- 40.1 All interested parties will be informed of the essential facts to be considered by the Commission.
- 40.2 All interested parties will receive 7 days to comment on the essential facts.
- 40.3 Upon receipt of a written request prior to the deadline contemplated in subsection 2, the Commission may grant parties an extension on good cause shown.
- 40.4 Any extension granted in terms of subsection 3 will apply only to the party to which such extension was granted, and will not apply to other interested parties.

- 40.5 The Commission will take all relevant comments on the essential facts into consideration in its final finding.

#### **41 Definitive anti-dumping duties**

- 41.1 In an original investigation, the Commission's final finding shall be forwarded to the Minister in the form of a recommendation to impose or not to impose a definitive anti-dumping duty or to accept a price undertaking.
- 41.2 Definitive anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied –
- (a) where a final finding of dumping and material injury is made; or
  - (b) where a final finding of dumping and threat of material injury is made, provided the effect of the dumped imports would, in the absence of the provisional measures, have led to a finding of material injury.
- 41.3 A definitive anti-dumping duty may be adjusted on a seasonal basis or on such other basis as determined by the Commission, but shall not exceed the duty determined in an original investigation or in a review.

#### **42 Price undertakings**

- 42.1 In original investigations, proceedings may be suspended or terminated following the receipt of a satisfactory voluntary price undertaking from any exporter to revise its prices or to cease exports to the SACU at dumped prices so that the Commission is satisfied that dumping or the injurious effect thereof is eliminated, provided it has made at least a preliminary determination in the matter. An undertaking may be suggested by the Commission or offered by an exporter.
- 42.2 Price increases under an undertaking should not be higher than necessary to eliminate the margin of dumping and may be less than the margin of dumping if such increases would be adequate to remove the injury to the SACU industry.
- 42.3 Notwithstanding subsection 1, if an undertaking is accepted by the Commission, it may finalise the investigation. If a negative determination of dumping or injury caused by such dumping is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. If an affirmative determination of dumping and injury caused by such dumping is made, the undertaking shall continue and the Commission may recommend the imposition of a definitive anti-dumping duty and its immediate suspension.
- 42.4 Where the Commission accepts an undertaking during the course of an investigation, it shall be deemed to take effect from the date on which the



investigation is concluded by means of a publication in the Government Gazette.

- 42.5 The Commission may decide on the information to be submitted in respect of the offering and maintenance of undertakings and may terminate an undertaking if the conditions stipulated in the undertaking are not met or such information is not submitted or cannot be verified.
- 42.6 Undertakings need not be accepted if the Commission considers their acceptance impractical, e.g. where the number of exporters is too great, or for other reasons, including reasons of general policy. Should the case arise, and where practicable, the Commission shall provide an exporter with reasons which have led it to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.
- 42.7 In cases where an undertaking is violated the Commission may take expeditious action against such exporter, including the immediate request to the Commissioner for the South African Revenue Service to impose provisional payments or definitive duties, as the case may be.

#### **43 Final report or notice**

- 43.1 Where the Minister has approved the Commission's recommendation, the Commission shall make a non-confidential report available after the publication of a notice by the South African Revenue Service implementing the recommendation.
- 43.2 The report shall contain determinations and conclusions reached on issues of fact and law considered material by the Commission in reaching its recommendation.
- 43.3 Where the Minister has rejected the Commission's recommendation, the Commission shall publish a notice of the recommendation.

#### **44 Public Interest**

- 44.1 In terms of section 16(1)(d)(i) of the *Main Act*, if directed by the Minister subsequent to the submission of the Commission's final recommendation in an original investigation or review, the Commission may conduct an inquiry to determine whether there are reasonable grounds to conclude that the amendment of an anti-dumping duty would be in the public interest.
- 44.2 The Commission's determination of the public interest as contemplated in subsection 1, shall be based on a consideration of all relevant factors, with no one or several of these factors necessarily giving decisive guidance, and may include consideration of whether –
  - (a) commercially substitutable products in commercial quantities are readily available from other sources that are not the subject of the

- anti-dumping proceeding of which the public interest inquiry forms part; and
- (b) the imposition, amendment or continuation of an anti-dumping duty, or the imposition, amendment or continuation of an anti-dumping duty in the amount determined in an investigation or review –
    - (i) is likely to substantially lessen or prevent competition in the domestic market for goods or services;
    - (ii) is likely to substantially lessen the competitiveness of domestic producers by limiting access to the product under investigation;
    - (iii) is likely to cause significant damage to domestic producers that use the product under investigation in the production of other goods or the provision of services, which assessment may include the injury factors set forth in section 17.3;
    - (iv) is likely to significantly restrict consumer access, at competitive prices, to the product under investigation or to other goods or services that use the product under investigation as an input; or
    - (v) is likely to significantly impact the public health, the public safety or the environment.
  - (c) The Commission may request the submission of information relevant to a determination of the public interest in a manner and form it deems appropriate.
  - (d) If, as a result of a public interest inquiry provided for in subsection 1, the Commission determines that the amendment of a duty would be in the public interest, the Commission shall specify in a recommendation to the Minister –
    - (i) that an anti-dumping duty not be imposed; or
    - (ii) the level of reduction of the anti-dumping duty determined in the investigation or review.

## **Part D – Reviews**

### **Sub-Part I - General**

#### **45 Notification**

- 45.1 Other than as provided for in section 61 in respect of sunset reviews, the government of the country concerned shall be notified of the review as soon as a properly documented review application has been received.
- 45.2 The government of the country concerned and all other known interested parties shall be supplied with all the relevant non-confidential information

as soon as the review in question has been initiated through publication in the *Government Gazette*.

#### **46 Initiation**

46.1 All reviews shall be initiated through notice in the *Government Gazette*. Such notice shall indicate the following minimum information:

- (a) the identity of the applicant;
- (b) the product under consideration;
- (c) the investigation periods for dumping and injury, respectively;
- (d) the scope of the review;
- (e) the current anti-dumping measures in place; and
- (f) a summary indicating the basic information on which the review is based.

46.2 For sunset reviews the provisions regarding the initiation of sunset reviews as contemplated in section 62 shall apply in addition to the provisions indicated in subsection 1.

#### **47 Responses by interested parties**

47.1 All interested parties are required to use the relevant Commission questionnaires in their responses.

47.2 Parties shall be deemed to have received the questionnaires 7 days after the dispatch of the questionnaires by the Commission.

47.3 From receipt of the questionnaires, as contemplated in subsection 2, parties shall receive 30 days to submit their responses to the Commission. The Commission may grant parties an extension on good cause shown.

#### **48 Essential facts**

48.1 All interested parties will be informed of the essential facts to be considered in the Commission's final determination.

48.2 All parties will receive 7 days from the dispatch of the essential facts letter to comment thereon.

48.3 The Commission may grant parties an extension on good cause shown.

48.4 Any extension granted in terms of subsection 3 will apply only to the party to which such extension was granted.

48.5 In its final determination the Commission will consider all relevant comments on the essential facts letter made by interested parties, provided

such comments are received by the deadline contemplated in subsections 2 and 3.

## **Sub-Part II - Interim Reviews**

### **49 Purpose**

The purpose of an interim review is to determine whether the continued imposition of an anti-dumping duty is necessary to offset dumping, whether injury would be likely to continue or recur if the anti-dumping duty were terminated or varied, or both, or whether the level of the anti-dumping duty is insufficient to offset the dumping that is causing injury.

### **50 Time frame**

The Commission –

- (a) may initiate an interim review upon receipt of a duly completed application provided that at least 12 months have elapsed since the publication of its final finding in the original investigation or the previous review; or
- (b) may initiate an interim review on its own initiative at any time after the publication of its final finding in the original investigation or the previous review.

### **51 Changed circumstances**

- 51.1 In its investigation, the Commission shall consider, inter alia, whether the circumstances regarding dumping and/or injury have changed significantly, as well as the nature of such changes, or whether circumstances have changed such that the definitive anti-dumping duty is no longer sufficient to remove the injury previously established.
- 51.2 In considering the nature of the changes referred to in subsection (1), the Commission shall examine if the significant change in circumstances is of a lasting nature.
- 51.3 Where an importer, exporter or foreign producer has not cooperated in the Commission's investigation that led to the imposition of the anti-dumping duty and such importer, exporter or foreign producer is subsequently willing to supply such information, this change in disposition will not qualify as significantly changed circumstances.

### **52 Review procedure**

- 52.1 An interim review shall consist of a single investigation phase.
- 52.2 The Commission may verify such information as it deems necessary to confirm the accuracy and the adequacy of the information submitted by any interested party.

### **53 Final recommendation**

The Commission's final finding, in the form of a recommendation to the Minister, may result in an increase, decrease, the withdrawal or the confirmation of the existing anti-dumping duty.

## **Sub-Part III - New Shipper Reviews**

### **54 Purpose and eligibility**

- 54.1 For the purpose of determining an individual margin of dumping, a new shipper review may be requested by an exporter which demonstrates that it –
- (a) did not export to SACU during the original investigation period for dumping but exported to the SACU thereafter; and
  - (b) is not related to any exporter or foreign producer which is subject to the anti-dumping duty.
- 54.2 The exporter requesting such review shall provide sufficient information to prove that it is not and was not related to any party to which the anti-dumping duty was applied.
- 54.3 The exports at issue in subsection 1(a), must have been made during the period under consideration in the new shipper review, which period shall normally not be less than one year, but may be less if sales during such period would permit a meaningful determination of dumping. In making such a determination, the Commission shall consider all relevant information, in particular whether the volume of export sales to SACU during the review period was similar to the sales of exporters from the same exporting country in the original investigation.
- 54.4 The Commission shall not consider a request for a new shipper review before definitive anti-dumping duties have been imposed.

### **55 Information required**

A new shipper shall provide the Commission with full information on normal value, export price and any other information deemed necessary by the Commission and shall submit such information in the prescribed format.

### **56 Suspension of anti-dumping duties**

- 56.1 The anti-dumping duties in respect of the new shipper shall be withdrawn simultaneously with the initiation of a new shipper review.
- 56.2 The Commission may request the Commissioner for the South African Revenue Service to impose provisional payments at the same level as the anti-dumping duties simultaneously with the withdrawal of the anti-

dumping duties in terms of subsection 1. Such provisional payments shall remain in force for the duration of the review.

## **57 Review procedure**

- 57.1 A new shipper review shall consist of a single investigation phase.
- 57.2 The Commission may verify such information as it deems necessary to confirm the accuracy and the adequacy of any information submitted by any interested party.
- 57.3 The exporter's margin of dumping will normally be determined as the difference between the normal value and the export price to South Africa. In the event that no export price to South Africa can be established, the Commission may determine the export price on any reasonable basis, including, but not limited to, with reference to the new shipper's export price to an appropriate third country.

## **58 Final recommendation**

The Commission's final finding, in the form of a recommendation to the Minister, may result in –

- (a) the termination of provisional measures and the imposition of an individual anti-dumping duty;
- (b) the termination of provisional measures and the imposition of the residual duty, including retroactively for the period for which provisional payments have been applied, to which the imports of the exporter or foreign producer had been subject prior to the review.

## **Sub-Part IV - Sunset Reviews**

### **59 Purpose**

In a sunset review, the Commission conducts a likelihood analysis to determine whether the expiry of an anti-dumping duty would be likely to lead to the continuation or recurrence of dumping and injury.

### **60 Duration of anti-dumping duties**

- 60.1 A definitive anti-dumping duty shall lapse no later than –
- (a) 5 years from the date of publication in the *Government Gazette* of the notice imposing such duty in an original investigation; or
  - (b) 5 years from the date of publication in the *Government Gazette* of the notice giving effect to the final finding in the most recent sunset review if that review covered dumping and injury;

unless a sunset review is initiated prior to the relevant expiry date above and the review determines that the lapsing of the duty would be likely to lead to a continuation or recurrence of dumping and injury.

- 60.2 If a sunset review has been initiated prior to the lapse of an anti-dumping duty, such anti-dumping duty shall remain in force until the sunset review has been finalised.

## **61 Initiation of sunset review**

- 61.1 A notice indicating that an anti-dumping duty will lapse on a specific date unless a sunset review is initiated shall be published in the *Government Gazette* approximately 6 months prior to the lapse of such anti-dumping duty.
- 61.2 The Commission will directly inform interested parties known from the original investigation or last review of the subject product of the imminent lapse of the anti-dumping duties as soon as the notice contemplated in subsection 1 has been published.
- 61.3 Interested parties will receive 30 days from the publication of notice in subsection 1 to request a sunset review.
- 61.4 In the event that the SACU industry requests that the anti-dumping duty be maintained, it shall provide the Commission with a proper application containing the necessary information to establish a prima facie case that the removal of the anti-dumping duty will be likely to lead to the continuation or a recurrence of injurious dumping.
- 61.5 If the Commission decides to initiate a sunset review, it shall publish an initiation notice in the *Government Gazette* prior to the lapse of such duties. Such notice shall contain the information as contemplated in section 46.1.

## **62 Notification**

- 62.1 The government of the country concerned shall be informed of the imminent lapse of the anti-dumping duty as contemplated in section 61.2.
- 62.2 The government of the country concerned and all other known interested parties shall be notified of –
- (a) the initiation of the investigation; or
  - (b) the termination of the proceeding;
- after the relevant notice has appeared in the *Government Gazette*.

## **63 Participation of foreign producers or exporters in sunset review**

- 63.1 Exporters or foreign producers that did not export the subject product to SACU during the period of investigation in a sunset review are not eligible to participate in a review.

- 63.2 In terms of subsection 1, the exporter or foreign producer that has not exported to the SACU will be subject to a residual dumping margin.

#### **64 Likelihood of continuation or recurrence of dumping and injury**

- 64.1 The likelihood of the continuation or recurrence of dumping and injury may be indicated by, amongst others –
- (a) Evidence of continued dumping and/or injury; or
  - (b) Evidence that a lack of injury is partly or wholly because of the effect of the anti-dumping duty.
- 64.2 In determining the likelihood of a continuation or recurrence of injury, the Commission shall consider the same injury factors it examines in original investigations.
- 64.3 In determining the likelihood of a continuation or recurrence of dumping, the normal value used to calculate the margin of dumping will be determined as provided for in section 11.
- 64.4 In determining the likelihood of a continuation or recurrence of dumping where there were exports of the like product to the SACU during the period of investigation, the export price used to calculate the margin of dumping will be determined as provided for in sections 13 or 14.
- 64.5 Notwithstanding subsections 3 and 4, in making a determination on the recurrence or continuation of dumping, the Commission may consider the dumping margin that was determined in the original investigation and in any previous sunset review.

#### **65 Review procedure**

- 65.1 A sunset review shall consist of a single investigation phase.
- 65.2 The Commission may verify such information as it deems necessary to confirm the accuracy and the adequacy of any information submitted by any interested party.

#### **66 Information required**

- 66.1 Following publication of the notice in terms of section 61.1, the SACU industry shall indicate whether it will request a sunset review to be undertaken.
- 66.2 The SACU industry shall provide the Commission with detailed information in the prescribed format indicating the likelihood of a continuation or recurrence of dumping and injury in the event that the anti-dumping duty is removed.
- 66.3 Once a sunset review has been initiated in terms of section 61.5 the exporters and foreign producers shall be required to submit information in



the required format to enable the Commission to make a finding on dumping. Exporters and foreign producers shall not be precluded from supplying any other information they may deem relevant.

- 66.4 The Commission may require importers to supply any information the Commission deems necessary. Importers shall not be precluded from supplying any other information they may deem relevant.

## **67 Non-cooperation**

- 67.1 Where the SACU industry does not request a sunset review or does not supply the required information following a notice published in terms of section 61.1 within the deadline indicated in section 61.3, the Commission will recommend that the anti-dumping duty be terminated forthwith or lapse on the date indicated in such notice.
- 67.2 Where the SACU industry has supplied the required information and the exporter or foreign producer does not cooperate within the time frames contemplated in section 47, the Commission may rely on the facts available to reach its final decision.

## **68 Final recommendation**

The Commission's final finding, in the form of a recommendation to the Minister, may result in –

- (a) the termination of the existing anti-dumping duty;
- (b) the re-imposition of the existing anti-dumping duty; or
- (c) an increase or decrease in the level of the existing anti-dumping duty.

## **Sub-Part V - Anti-Circumvention Reviews**

### **69 Circumvention**

#### **69.1 Purpose and scope**

- (a) An anti-circumvention review is an enforcement proceeding the objective of which is to discipline the avoidance of anti-dumping duties.
- (b) An anti-dumping duty imposed in an original investigation or a review may be extended to other goods, including parts or a slightly modified like product, producers, exporters and countries if circumvention of the duty is taking place.

#### **69.2 Circumvention shall be found to take place where –**

- (a) there is a change in the pattern of trade between a third country or countries and South Africa or SACU or between producers or

exporters in the country subject to an anti-dumping duty and South Africa or SACU –

- (i) which results from a practice, process or work;
  - (ii) for which there is no or insufficient cause or economic justification other than the initiation of an anti-dumping investigation or the imposition of the anti-dumping duty;
- (b) remedial effects of the anti-dumping measure are being undermined in terms of the volumes or prices of the product under investigation; and
- (c) dumping can be found in relation to normal values previously established for the like or similar products, where such a determination must be made, **as in the case where the alleged circumvention involves exports from a country not previously subject to the anti-dumping duty.**

69.3 The practice, process or work referred to in subsection 2(a)(i) includes –

- (a) the minor modification of the product subject to the anti-dumping duty;
- (b) a change in the pattern or channel of sales by producers or exporters of the product subject to the anti-dumping duty to benefit from a duty lower than the duty applicable to them;
- (c) the transit, in terms of a consignment or otherwise, of the product subject to the anti-dumping duty through a third country;
- (d) the assembly or further processing of inputs, parts, components or sub-assemblies in South Africa, SACU or a third country; or
- (e) country hopping, as defined in subsection 12.

The practices listed do not in themselves constitute circumvention unless the requirements of subsection 2 are satisfied.

69.4 The following practices may constitute specific forms of circumvention which may be examined without requiring a change in the pattern of trade as contemplated in subsection 2(a), provided that the Commission determines that the remedial effect of the anti-dumping duty is being undermined, that the practice is linked to the existence of the anti-dumping measure, and that the practice lacks sufficient economic justification other than the avoidance of the anti-dumping duty:

- (a) improper declaration of –
  - (i) the value of the product;
  - (ii) the origin of the product; or

- (iii) the nature or classification of the product;
  - (b) absorption of the anti-dumping duty by the producer, exporter or the importer;
  - (c) declaration under a different tariff heading, as part of a practice designed to avoid the application of the anti-dumping duty, provided that where the issue concerns solely whether a product falls within the existing product description, the matter shall be addressed under Sub-Part VI (Scope Reviews); or
  - (d) any other specifically identified practice having an equivalent effect.
- 69.5 Any instance of circumvention as contemplated in subsection 4(a) shall be referred to the Commissioner of the South African Revenue Service for further investigation. This shall not preclude the Commission from taking anti-dumping action if the information at the Commission's disposal, including information obtained through submissions by interested parties, warrants such action. If, following an investigation, the Commission determines that an improper declaration has resulted in the avoidance of an anti-dumping duty, it may recommend the extension of the duty to such improperly declared product.
- 69.6 In terms of subsection 3(a), minor modifications of the product subject to anti-dumping duties shall be deemed to have taken place, regardless of whether there is a change in tariff classification, if the subsequently exported product-
- (a) has the same or similar production processes, uses the same or similar input materials and has the same or similar physical appearance or characteristics; or
  - (b) is a substitute for the product on which anti-dumping duties have been imposed.
- 69.7 In terms of subsection 3(d), assembly or further processing in a third country, South Africa or SACU shall be deemed to take place if the value added in such third country, South Africa or SACU does not exceed 25 per cent of the total cost of production of the exported product or does not constitute a major transformation process. Such assembly shall not be regarded as changing the country of origin.
- 69.8 The value added in terms of subsection 7 shall be determined with reference to the direct and indirect costs of production only and shall not include selling, general and administrative costs, packaging expenses or profit.
- 69.9 Absorption of the anti-dumping duty as contemplated in subsection 4(b) shall be deemed to take place where, following the imposition of a provisional payment or definitive anti-dumping duty -
- (a) the export price to the SACU decreases; or

- (b) the resale price in the SACU does not increase to reflect the full amount of the anti-dumping duty.

69.10 Where the circumstances contemplated in subsection 9 are established, absorption may be presumed unless the exporter, producer or importer demonstrates, on the basis of verifiable evidence, that the pricing behaviour is attributable to factors unrelated to the imposition of the anti-dumping duty.

69.11 In assessing absorption, the Commission may examine, inter alia –

- (a) changes in export prices, resale prices and costs;
- (b) the relationship between the exporter, producer and importer;
- (c) evidence of reimbursement, compensation or other arrangements designed to offset the anti-dumping duty; and
- (d) any other relevant factor affecting pricing behaviour.

69.12 Country hopping as contemplated in subsection 3(e) shall be deemed to take place if imports, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory.

## **70 Information required**

70.1 The SACU industry or other interested party shall provide such information that is reasonably available to it to indicate that circumvention is taking place.

70.2 Any request for an anti-circumvention review shall include information of the specific type of circumvention that is alleged to take place.

70.3 The Commission may require any interested party to submit such information as it deems necessary to properly conduct the review.

70.4 In the event that the party against which the allegation of circumvention is made does not respond properly within the stated deadline, the Commission may make a decision on the facts available to it.

## **71 Review procedure**

71.1 An anti-circumvention review shall consist of a single investigation phase and shall normally be concluded within 9 months and may be concluded within 6 months where the information on record is sufficient.

71.2 The Commission may conduct desk verifications only in anti-circumvention reviews unless it determines that an on-site verification is strictly necessary.

- 71.3 Where the Commission has prima facie evidence that circumvention is occurring and that delay would undermine the remedial effect of the anti-dumping duty, it may publish a notice of its intention to request the Commissioner for the South African Revenue Service to provisionally extend the duty. Interested parties shall be given not less than 7 days to make representations prior to such request.
- 71.4 In an anti-circumvention review, the Commission shall not re-examine the existence of material injury established in the original investigation or review, unless exceptional circumstances so require.
- 71.5 In assessing whether the remedial effect of an anti-dumping duty is being undermined in terms of volumes of imports, the Commission shall consider whether the volume of the imports subject to the alleged circumvention is non-negligible, including whether such volumes have increased following the imposition of the duty and whether they are of a magnitude that weakens the intended remedial effect of the duty. No specific quantitative threshold is required, and the Commission may have regard to absolute or relative volumes or trends over time.
- 71.6 In assessing whether the remedial effect of an anti-dumping duty is being undermined in terms of prices, the Commission shall consider whether the prices of the imports subject to the alleged circumvention are at a level, or have adjusted to a level, which weakens the intended remedial effect of the duty. This may include whether such prices undercut, depress, or otherwise exert downward pressure on the non-injurious price established in the original investigation or review. No specific degree of price undercutting or depression is required, and the Commission may rely on absolute price levels, price trends over time, or relative price differences as appropriate in the circumstances.
- 71.7 In relation to any circumvention alleged -
- (a) where the alleged circumvention concerns imports originating in or exported from a country that was subject to the original anti-dumping investigation or a subsequent review, the Commission may rely on the dumping margin established in that investigation or review; or
  - (b) where the alleged circumvention concerns imports exported from or originating in a country not subject to the original anti-dumping investigation or review, the Commission shall determine whether dumping exists in relation to such country and may use the normal values previously established to determine the margin of dumping.
- 71.8 In the event that the relevant interested parties have not submitted appropriate information before the deadline contemplated in section 47, the Commission may make a final finding on the basis of the facts available.
- 71.9 In anti-circumvention reviews involving absorption, the Commission may construct the export price from the first point of resale by subtracting such costs as were indicated in the original investigation.

71.10 The Commission may conduct such verifications as it deems necessary to confirm the accuracy and the adequacy of any information submitted by any interested party.

71.11 Prior to making a final determination, the Commission shall issue an essential facts letter. Comments on the essential facts letter shall be submitted within 7 days, unless extended for good cause.

## **72 Final recommendation**

Where the Commission determines in terms of Regulations 69.2 or 69.4 that circumvention is occurring, its final finding, in the form of a recommendation to the Minister, may result in –

- (a) the increase of the original anti-dumping duties to compensate for absorption of anti-dumping duties;
- (b) the extension of the original anti-dumping duty to import of parts, components, sub-assemblies, slightly modified products, later-developed products, substitute like products, new models or any other products with essentially the same characteristics as the product under investigation;
- (c) the extension, in light of country hopping, of the original anti-dumping duty to imports of the product concerned exported from or originating in a country not previously subject to the duty;
- (d) the extension of the original anti-dumping duty to products that have been improperly declared or declared under a different tariff heading;
- (e) the extension of the original anti-dumping duty to products exported, consigned or sold through intermediaries or through any country or customs territory used for transshipment, assembly or further processing; or
- (f) the extension of the original anti-dumping duty to producers benefiting from individual duties where such producers are found to be engaged in circumvention or have failed to cooperate in the investigation.

The duty to be extended from the original anti-dumping investigation or subsequent review shall be the residual duty except in cases where an individual duty has been calculated as part of the proceedings.

## **Sub-Part VI – Scope Reviews**

### **73 Purpose**

- 73.1 A scope review is an interpretative proceeding and clarifies whether a product falls within the product description set out in the original anti-dumping measure.
- 73.2 A determination under this Sub-Part shall not constitute the imposition, amendment or extension of an anti-dumping duty and shall not require a recommendation to the Minister.

### **74 Initiation**

- 74.1 The Commission may initiate a scope review –
- (a) upon written request by an interested party; or
  - (b) on its own initiative.
- 74.2 The Commission shall publish a notice of initiation in the Government Gazette.

### **75 Review procedure**

- 75.1 In determining whether a product falls within the scope of an anti-dumping measure, the Commission shall examine –
- (a) the wording of the product description in the original investigation or review;
  - (b) the determinations and findings in the original investigation or subsequent reviews;
  - (c) the physical and commercial characteristics of the product concerned; and
  - (d) the tariff classification.
- 75.2 Tariff classification are indicative only and therefore shall not be determinative.
- 75.3 Interested parties shall be afforded an opportunity to submit written representations prior to a final determination.

### **76 Final determination**

- 76.1 If the Commission determines that the product falls within the existing product description, the anti-dumping duty shall apply to such product in accordance with the original measure.

- 76.2 If the Commission determines that the product does not fall within the existing product description, no action shall be taken under this Sub-Part, without prejudice to the initiation of an anti-circumvention investigation in terms of section 69, where appropriate.

### **Part E – Judicial Reviews**

#### **77 Judicial reviews**

- 77.1 Without limiting a court of law's jurisdiction to review final decisions of the Commission, interested parties may challenge preliminary decisions or the Commission's procedures prior to the finalisation of an investigation in cases where it can be demonstrated that –
- (a) the Commission has acted contrary to the provisions of the *Main Act* or these regulations;
  - (b) the Commission's action or omission has resulted in serious prejudice to the complaining party; and
  - (c) such prejudice cannot be made undone by the Commission's future final decision.
- 77.2 Interested parties must give the Commission at least 30 days' notice prior to filing any judicial review relating to preliminary or final determinations.
- 77.3 Any Commission decision may be varied to give effect to a ruling of a Dispute Panel or the Appellate Body under the World Trade Organisation Dispute Settlement Mechanism.
- 77.4 A Commission decision may be varied to give effect to negotiations under the World Trade Organisation Dispute Settlement Mechanism, provided the Commission has consulted with the affected interested parties regarding any proposed variation.

### **Part F - Refunds**

#### **78 Applications for refunds**

- 78.1 An importer may request reimbursement of anti-dumping duties collected where it is shown that the dumping margin, on the basis of which anti-dumping duties were paid, has been eliminated or has been reduced to a level which is below the level of the duty in force.
- 78.2 Other than as contemplated in section 75, any request, containing all necessary information, for a refund shall be submitted during the anniversary month of the anti-dumping duty and shall relate only to the preceding 12-month period.
- 78.3 An application for refund shall be considered as duly supported by evidence where it contains precise information on the amount of the refund of anti-dumping duties claimed and all customs documentation relating to the



calculation and payment of such anti-dumping duties. It shall also include, for the relative period under review, information on normal values and export prices to the SACU for the producer or exporter to which the anti-dumping duty applies.

78.4 Regardless of whether the producer or exporter and the importer are related parties, the producer or exporter may supply any information contemplated in subsection 3 direct to the Commission.

78.5 The Commission may, at any time after receiving a refund application, decide to initiate a refund review, whereupon the information and findings from such review shall be used to determine whether a refund is justified.

## **79 Refunds following reviews**

Where the Commission, following a refund review, recommends that the existing anti-dumping duty be decreased or withdrawn, the relevant importer or importers may request that anti-dumping duties be refunded in line with the Commission's findings.

## **Part G - Final Provisions**

### **80 Delegation**

Other than final decision-making powers the Commission may delegate any of its functions in respect of anti-dumping investigations to its investigation staff.

### **81 Transitional application**

These regulations shall apply to all investigations and reviews initiated after the promulgation of the regulations.