

## **GENERAL NOTICE**

### **NOTICE 3197 OF 2003**

I, Alec Erwin, in my capacity as Minister of Trade and Industry, acting under the powers vested in me by section 59 of the International Trade Administration Act (Act 71 of 2002) hereby prescribe that—

## **REPUBLIC OF SOUTH AFRICA**

### **THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION**

#### **ANTI-DUMPING REGULATIONS**

## TABLE OF CONTENTS

### **Part A – Definitions**

1. Definitions

### **Part B – General Provisions**

2. Confidentiality
3. Investigations
4. Representation
5. Oral hearings
6. Adverse party meetings

### **Part C – Procedures**

#### **Sub-Part I – General**

7. SACU industry
8. Normal value
9. Related foreign market producers and sellers
10. Constructed export price
11. Comparison of normal value and export price
12. Margin of dumping
13. Material injury
14. Threat of material injury
15. Material retardation of the establishment of an industry
16. Causality
17. Lesser duty rule
18. Verifications
19. Verification reports
20. Deadlines

#### **Sub-Part II- Pre-Initiation Procedure**

21. Properly documented complaint
22. Properly documented application
23. Normal value standard for initiation purposes
24. Material injury standard for initiation purposes
25. SACU industry verification
26. Merit assessment
27. Notification

28. Initiation

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

29. Responses by interested parties

30. Extensions for submission

31. Deficiencies

32. Non-cooperation by exporters or foreign producers

33. Provisional measures

34. Preliminary report

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

35. Comments on preliminary report

36. Extension of validity of provisional measures

37. Essential facts

38. Definitive anti-dumping duties

39. Price undertakings

**Part D – Reviews**

**Sub-part I – General**

40. Notification

41. Initiation

42. Responses by interested parties

43. Essential facts

**Sub-Part II - Interim Reviews**

44. Time frame

45. Changed circumstances

46. Review procedure

47. Final recommendation

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

48. Eligibility

49. Information required

50. Suspension of anti-dumping duties

51. Review procedure

52. Final recommendation

**Sub-Part IV – Sunset Reviews**

53. Duration of anti-dumping duties

54. Initiation of sunset review

- 55. Notification
- 56. Review procedure
- 57. Information required
- 58. Non-cooperation
- 59. Final recommendation

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

- 60. Circumvention
- 61. Information required
- 62. Review procedure
- 63. Final recommendation

**Sub-Part VI – Judicial Reviews**

- 64. Judicial reviews

**Sub-Part VII – Refunds**

- 65. Applications for refunds
- 66. Refunds following interem reviews

**Part E – Final Provisions**

- 67. Delegation
- 68. Transitional application

**REGULATIONS****Part A - Definitions****1. Definitions**

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

**"Constructed export price"** is the export price calculated in circumstances described in section 32(5) of the *Main Act*. The constructed export price may be determined on

(a) The basis of the selling price to the first independent buyer in the SACU less –

- (i) All actual or allocated costs incurred between the exporter's ex-factory price and the first independent resale price; and
- (ii) A reasonable profit, as determined according to section 10.3; or

(b) Any other reasonable basis.

**"Constructed normal value"** is the normal value determined in terms of section 32(2)(b)(ii)(aa) of the *Main Act*.

**"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, as referred to in sections 19.3, 30.1, 35.2, 37.3, 42.4 and 43.3, 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*.

**"Lesser duty"** means the provisional payment or anti-dumping duty imposed at the lesser of the margin of dumping or the margin of injury, and which is deemed to be sufficient to remove the injury caused by the dumping.

**"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.

**"Price depression"** takes place where the SAW 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 SAW 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.

**"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 Interested parties providing confidential information in any correspondence shall furnish non-confidential summaries thereof. These summaries shall –
- (a) indicate in each instance where confidential information has been omitted;
  - (b) indicate in each instance the reasons for confidentiality; and
  - (c) be in sufficient detail to permit other interested parties a reasonable understanding of the substance of the information submitted in confidence.
- 2.2 Where information does not permit summarisation reasons should be provided why the information cannot be summarised.
- 2.3 The following list indicates "information that is by nature confidential" as per section 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) individual sales prices ;
  - (g) information, the release of which could have serious consequences for the person that provided such information; and
  - (h) information that would be of significant competitive advantage to a competitor;
- provided that the party submitting such information indicates it to be confidential.
- 2.4 All correspondence not clearly indicated to be confidential shall be treated as non-confidential.
- 2.5 The Commission may disregard any information indicated to be confidential that is not accompanied by a proper non-confidential version and will return such information to the party submitting same, if this deficiency has not been addressed in accordance with the provisions of section 31.

2.6 The Commission will disregard any information indicated to be confidential that is not accepted as confidential by the Commission under section 34(1) of the *Main Act*.

### **3. Investigations**

3.1 An anti-dumping investigation shall only be initiated upon acceptance of a written application by or on behalf of the SACU industry, except as provided for in subsection 3.

3.2 An interim, new shipper or anti-circumvention review shall be initiated upon a written application by or on behalf of an interested party, except as provided for in subsection 3.

3.3 The Commission may initiate an investigation mentioned in subsection 1 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 sufficient evidence of, or of a significant change in circumstances relating to, dumping, material injury and/or a causal link to justify the initiation of such investigation or review. A non-confidential version of the information shall be made available to all known interested parties.

### **4. Representation**

4.1 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.

4.2 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.

4.3 Once an interested party has appointed a representative all communication between the Commission and the interested party will take place through the appointed representative.

**5. Oral hearings**

- 5.1 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.
- 5.2 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.
- 5.3 All information presented during an oral hearing shall be reduced to writing and a non-confidential version will be placed on the public file.
- 5.4 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.
- 5.5 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.
- 5.6 The Commission may limit or add to the agenda contemplated in subsection 4.

**6. Adverse party meetings**

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.

- 6.5 All information presented during an adverse party meeting shall be reduced to writing and a non-confidential version shall be placed on the public file.
- 6.6 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.
- 6.7 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.
- 6.8 The Commission may limit the duration of the adverse party meeting. Any such limitation must be communicated to all parties attending the meeting when the date for the meeting is finalised.
- 6.9 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.
- 6.10 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.

## **Part C – Procedures**

### **Sub-Part I – General**

#### **7. SACU industry**

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

7.2 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.

7.3 An application shall be regarded as brought by \*r 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.

7.4 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.

7.5 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.

## 8. Normal value

8.1 "Normal value" as defined in section 32(2)(b)(i) of the *Main Act* shall be interpreted to mean -

- (a) the price paid 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.

8.2 Domestic sales or export sales to a third country may be considered to be not in the ordinary course of trade if the Commission determines that such sales -

- (a) took place at prices below total costs, including cost of production and administrative, selling, general and packaging 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) were made to a related party; or
  - (c) do not reflect normal commercial quantities
- 8.3 Domestic 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.
- 8.4 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.
- 8.5 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 Services.
- 8.6 In cases where the number of producers, exporters, importers or types of products is large, the investigation may be limited to a reasonable number of parties or types of products by using –
- (a) the largest percentage of the exports from the country in question which can reasonably be investigated; or
  - (b) samples that are statistically valid on the basis of the information available to the Commission at the time of the selection.
- 8.7 If the Commission decides to limit its investigations as contemplated in subsection 6, any selection may be made after consultation with the relevant exporters.
- 8.8 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 exporter or foreign producer not initially selected who submits the necessary information in time for that information to be considered along with the information of exporters or producers selected, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Commission.

- 8.9 If the Commission constructs the normal value, as contemplated in section 32(2)(b)(ii)(aa) of the Main Act, 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.
- 8.10 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.
- 8.11 The constructed normal value in subsection 10 shall normally be constructed using the producer's own costs and profit, provided that such costs —
- (a) reflect the actual costs of the product;
  - (b) are Generally Accepted Accounting Practice (GAAP) consistent; and
  - (c) are historically based.
- 8.12 The selling, general and administrative expenses contemplated in subsection 10 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 .
- 8.13 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.

8.14 In cases where the normal value needs to be determined as contemplated in section 32(4) of the Main Act, the Commission may determine the normal value of the products under consideration for the foreign producer or country in question on the basis of –

- (a) the normal value established for or in a third or surrogate country; or
- (b) the costs and profits of and for the company in question, as listed in subsection 10, and as contemplated in accordance with subsection 15.

8.15 In cases where the Commission determines the normal value as contemplated in subsection 14(b), such cost inputs shall be accorded the market related cost of the different inputs, whether determined in that country or in a third or surrogate country.

8.16 Where the SACU industry in filing an application substantiates an allegation that section 32(4) of the *Main Act* applies to the application, it may submit normal value information contemplated in subsection 14 and 15 in support of its application.

## **9. Related foreign market producers and resellers**

9.1 Where the foreign producer sells the product under investigation 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.

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

## **10. Constructed export price**

10.1 Where -

- (a) there is no export price at the time of importation; or
  - (b) the exporter or the foreign producer and the importer are related; or
  - (c) the invoiced export price appears to be unreliable for any other reason;
- the export price may be constructed from the first point of resale to an independent buyer.

10.2 In constructing such export price the Commission shall deduct -

- (a) all costs between the exporter and the importer; and
- (b) a reasonable profit.

10.3 The reasonable profit contemplated in subsection 2(b) may be determined by calculating -

- (a) the total cost of the producer/exporter;
  - (b) the total cost of the importer, including all costs from the ex-factory export point of the producer/exporter; and
  - (c) the total profit realised by both the producer/exporter and the importer;
- and by allocating the profit in the same ratio as the costs incurred by the two parties. The reasonable profit allocated shall not be less than zero.

10.4 In the event that

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

**11. Comparison of normal value and export**

- 11.1 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.
- 11.2 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.
- 11.3 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, wholesaler or retail level.
- 11.4 The comparison shall normally be made at the same terms of trade, including packaging, terms of delivery and payment terms.
- 11.5 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.
- 11.6 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 differ significantly among different purchasers, regions or time periods.
- 11.7 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.

**12. Margin of dumping**

- 12.1 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.
- 12.2 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 Services, a separate margin of dumping shall be calculated for each product;
  - (b) in the case of products that cannot be separately identified by the South African Revenue Services, 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 on the basis of the individual export volume of each product.
- 12.3 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.

**13. Material injury**

- 13.1 In determining material injury to the SACU industry the Commission shall consider whether there has been a significant depression and/or suppression of the SACU industry's prices.
- 13.2 In its determination of material injury the Commission shall further consider whether there have been significant changes in the domestic performance of the SACU industry in respect of the following potential injury factors:
- (a) sales volume;
  - (b) profit and loss;
  - (c) output;
  - (d) market share;
  - (e) productivity;
  - (f) return on investments;
  - (g) capacity utilisation;
  - (h) cash flow;

- (i) inventories;
- (j) employment;
- (k) wages;
- (l) growth;
- (m) ability to raise capital or investments; and
- (n) any other relevant factors placed before the Commission.

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

13.4 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.

#### **14. Threat of material injury**

14.1 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.

14.2 In considering a threat of material injury the Commission shall, in addition to the factors indicated under section 13, 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.

**15. Material retardation of the establishment of an industry**

- 15.1 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.
- 15.2 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.
- 15.3 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.

**16. Causality**

- 16.1 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.
- 16.2 The volume of exports from a country shall normally be regarded as negligible if the volume of imports for the like product from that country is found to account for less than three per cent of the total imports of the like product into the SACU market, unless countries which individually account for less than three per cent of the total imports of the like product into the SACU market for the like product collectively account for more than seven per cent of the total imports of the like product into the SACU market.
- 16.3 The Commission may cumulatively assess the effect of the dumped imports only if it finds that cumulation is appropriate in light of–
- (a) competition between imports from the different countries; and

(b) competition between the imported products and the SACU like products ;

and if

(c) the imports from the countries are not negligible as contemplated in subsection 3; and

(d) the margin of dumping is two per cent or more when expressed as a percentage of the export price.

16.4 The Commission shall determine whether there is a causal link between dumping and the material injury determined under section 13.

16.5 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 trade practices of and competition between the foreign and SACU producers;
- (d) developments in technology;
- (e) other factors affecting the SACU prices;
- (f) the industry's export performance; and
- (g) the productivity of the SACU industry.

#### **17. Lesser duty rule**

The Commission shall consider applying the lesser duty rule if both the corresponding importer and exporter have cooperated fully.

#### **18. Verifications**

18.1 The Commission shall satisfy itself as to the accuracy of the information supplied by cooperating interested parties .

18.2 The Commission may conduct such verifications at the SACU producers and at cooperating importers, exporters and foreign producers as it may deem necessary.

18.3 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 or acts so as to significantly impede the investigation, the Commission may disregard the information submitted by that party.

18.4 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. The Commission may nevertheless consider information that was properly submitted and verified.

18.5 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.

18.6 Where the government of the country concerned objects to the Commission's verification the Commission may make a preliminary or final decision based on the facts available, and may exclude any information submitted by any party in that country.

## **19. Verification reports**

19.1 Following an exporter or foreign producer verification the Commission shall make a verification report available to the company in question indicating all information verified. Such verification report shall normally be made available before the Commission's preliminary finding.

19.2 The Commission will place a copy of the non-confidential verification report on the public file prior to its preliminary determination.

19.3 Parties will receive 7 days to comment on the verification report. The Commission may grant an extension upon good cause shown.

## **20 Deadlines**

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

**Sub-Part H – Pre-Initiation Procedure****21 Properly documented complaint**

- 21.1 Written complaints shall be made by or on behalf of the SACU industry using the Commission's relevant questionnaire.
- 21.2 On receipt of a complaint the Commission's trade remedies unit shall base with the SACU industry to ensure that all required information has been submitted in the required format.

**22 Properly documented application**

- 22.1 In determining whether a complaint submitted in terms of section 21 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.
- 22.2 The Commission will return all applications that are not properly completed to the applicant.

**23 Normal value standard for initiation purposes**

- 23.1 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 .
- 23.2 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.
- 23.3 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.
- 23.4 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.

23.5 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 expenses and profit may be based on reasonable assumptions.

23.6 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).

#### **24 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 13 indicates a *prima facie* case of material injury.

#### **25 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.

#### **26 Merit Assessment**

26.1 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.

26.2 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.

26.3 The Commission may grant the SACU industry an oral hearing to discuss the reasons for rejecting an application if the applicant so requests.

## 27 Notification

27.1 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 22, after verification of the SAW industry's injury information, but prior to initiation.

27.2 Except as provided for in subsection 1, the Commission shall not publicise the application prior to the initiation of an investigation.

27.3 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 28.

## 28 Initiation

28.1 An investigation shall be formally initiated through publication of an initiation notice in the *Government Gazette*.

28.2 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.

28.3 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.

28.4 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, as contemplated in section 30, shall be considered on the basis of ignorance of the investigation.

28.5 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**

#### **29 Responses by interested parties**

29.1 Importers, exporters and foreign producers are required to use the relevant Commission questionnaires in their responses to the Commission.

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

29.3 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.

29.4 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*.

29.5 All submissions shall be made in both hard copy and in electronic format, unless the Commission has agreed otherwise in writing. Failure to comply with this provision may result in the submission being regarded as deficient.

#### **30 Extensions for submissions**

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

30.2 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.

**31 Deficiencies**

- 31.1 Submissions may be deemed deficient -
- (a) If any relevant information has not been submitted;
  - (b) If a proper non-confidential version has not been submitted; or
  - (c) In the circumstances contemplated in section 29.5.
- 31.2 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.
- 31.3 The Commission will not consider submissions that are deficient after the deadline contemplated in subsection 2 for the purpose of its preliminary finding.

**32 Non-cooperation by exporters or foreign producers**

- 32.1 In the event that no exporter or producer from a particular country cooperates in an anti-dumping investigation by the deadline contemplated in sections 29 or 30, the Commission may, subject to the requirements of section 33.1, immediately request the imposition of a provisional payment on the basis of the facts available.
- 32.2 In the event that one or more exporters or producers in a particular country cooperates while other exporters or producers do not cooperate, the Commission, for the purpose of the non-cooperating exporters producer or producers, may base its preliminary decision on the best information available.
- 32.3 In order to expedite proceedings, the Commission may split investigations between cooperating and non-cooperating exporters.
- 32.4 In the event that an exporter has submitted an incomplete or otherwise deficient submission by the deadline contemplated in sections 29, 30 and 31, the Commission will disregard its information for the purpose of its preliminary finding,

**33 Provisional measures**

- 33.1 Provisional measures may not be imposed within less than 60 days after initiation of an investigation.
- 33.2 Provisional measures will normally be imposed for a period of six months.

33.3 The validity of provisional payments may be extended to nine months on request of any interested exporter.

33.4 The Commission may determine the level of provisional payments against non-cooperating parties as set out in section 32.2.

#### **34 Preliminary report**

34.1 The Commission shall make available a non-confidential report within seven days of the publication of its preliminary finding.

34.2 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**

#### **35 Comments on preliminary report**

35.1 All interested parties shall receive 14 days, from the date the preliminary report is made available, to comment in writing.

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

35.3 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.

35.4 Other than as contemplated in subsection 5, the Commission will not accept new information following its preliminary finding.

35.5 Parties that have submitted deficient responses, as contemplated in section 31, and that have addressed the deficiencies, prior to the deadline indicated in subsection 1 of this section, shall be deemed cooperating parties and the Commission will consider their information in its final finding, subject to the provisions of section 36.1 and the requirements to finalise an investigation timely.

**36 Extension of validity of provisional measures**

36.1 Exporters submitting additional information to address any deficiencies as contemplated in section 30, and where such deficiencies were not addressed by the deadline contemplated in subsection 30.1, may, in order for the Commission to have sufficient time to consider the new information, request the Commission to extend the validity of a provisional measure to 9 months.

36.2 The Commission may request an extension of any provisional measure to a maximum of nine months where required to properly and fairly consider information that may have an effect on its final recommendation.

**37 Essential facts**

37.1 All interested parties will be informed of the essential facts to be considered by the Commission.

37.2 All interested parties will receive 7 days to comment on the essential facts.

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

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

**38 Definitive anti-dumping duties**

38.1 Definitive anti-dumping duties will remain in place for a period of five years from the date of the publication of the Commission's final recommendation unless otherwise specified or unless reviewed prior to the lapse of the five-year period.

38.2 Definitive anti-dumping duties may be imposed with retroactive effect as provided for in terms of the Customs and Excise Act, 1964 (Act No 91 of 1964).

**39 Price undertakings**

39.1 Proceedings may be suspended or terminated following the receipt of a satisfactory 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.

39.2 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 are not met.

39.3 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.

39.4 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.

**Part D – Reviews**

**Sub-Part I – General**

**40 Notification**

40.1 Other than as provided for in section 55 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.

40.2 The government of the country concerned and all other known interested parties shall be supplied with all the relevant non-confidential information as soon the review in question has been initiated through publication in the *Government Gazette*.

**41 Initiation**

41.1 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.

41.2 For sunset reviews the provisions regarding the initiation of sunset reviews as contemplated in section 56 shall apply in addition to the provisions indicated in subsection 1.

**42 Responses by interested parties**

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

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

42.3 From receipt of the questionnaires, as contemplated in subsection 2, parties shall receive 30 days to submit their responses to the Commission.

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

**43 Essential facts**

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

43.2 All parties will receive 14 days from the dispatch of the essential facts letter to comment thereon.

43.3 The Commission may grant parties an extension on reasonable grounds shown.

43.4 In its final determination the Commission will consider all relevant comments on the essential facts letter made by cooperating interested parties, provided such comments are received by the deadline contemplated in subsections 2 and 3.

**Sub-Part II-Interim reviews****44 Time frame**

The Commission will not normally consider an application for an interim review sooner than 12 months after the publication of its final finding in the original investigation or the previous review.

**45 Changed circumstances**

- 45.1 The Commission will only initiate an interim review if the party requesting such interim review can prove significantly changed circumstances.
- 45.2 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.
- 45.3 No party shall be precluded from requesting an interim review simultaneously with a sunset review in order to expand or limit the scope of application or level of any anti-dumping duties.

**46 Review procedure**

- 46.1 An interim review shall consist of a single investigation phase, subject to the requirements of section 43.
- 46.2 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.

**47 Final recommendation**

- 47.1 The Commission's final finding, in the form of a recommendation to the Minister, may result in an increase, decrease, the withdrawal or the reconfirmation of the existing anti-dumping duty.
- 47.2 The Commission may increase, decrease or confirm the scope of the application of such anti-dumping duty.

**Sub-Part III – New Shipper Reviews****48 Eligibility**

- 48.1 Only exporters that did not export to SACU during the original investigation period for dumping may request a new shipper review.
- 48.2 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.
- 48.3 The Commission shall not consider a request for a new shipper review before definitive anti-dumping duties have been imposed.

**49 Information required**

- 49.1 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.
- 49.2 In the event that the new shipper has not exported any products to SACU during the period under review, it shall provide the Commission with the required information in the prescribed format.

**50 Suspension of anti-dumping duties**

- 50.1 The anti-dumping duties in respect of the new shipper shall be withdrawn simultaneously with the initiation of a new shipper review.
- 50.2 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.

**51 Review procedure**

- 51.1 A new shipper review shall consist of a single investigation phase.
- 51.2 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.

- 51.3 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.

## **52 Final recommendation**

The Commission's final finding may result in a recommendation to –

- (a) impose an anti-dumping duty equal to or lower than the margin of dumping; or
- (b) terminate the provisional payment.

## **Sub-Part IV – Sunset Reviews**

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

- 53.1 Anti-dumping duties shall remain in place for a period not exceeding 5 years from the imposition or the last review thereof.
- 53.2 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.

### **54 Initiation of sunset review**

- 54.1 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.
- 54.2 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.
- 54.3 Interested parties will receive 30 days from the publication of the notice contemplated in subsection 1 to request a sunset review.

54.4 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.

54.5 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 41.

## **55 Notification**

55.1 The government of the country concerned shall be informed of the imminent lapse of the anti-dumping duty as contemplated in section 54.1.

55.2 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*.

## **56 Review procedure**

56.1 A sunset review shall consist of a single investigation phase.

56.2 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 Information required**

57.1 Following publication of the notice in terms of section 54.1 the SACU industry shall indicate whether it will request a sunset review to be undertaken.

57.2 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.

57.3 Once a sunset review has been initiated in terms of section 54.4 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.

57.4 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.

**58 Non-cooperation**

58.1 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 54.1 within the deadline indicated in section 54.2, the Commission will recommend that the anti-dumping duty lapse on the date indicated in such notice.

58.2 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 42, the Commission may rely on the facts available to reach its final decision.

**59 Final recommendation**

The Commission's recommendation may result in the withdrawal, amendment or reconfirmation of the original anti-dumping duty.

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

**60 Circumvention**

60.1 Other than circumvention contemplated in subsections 2(a) and (d), circumvention shall be deemed to take place if one or more of the following conditions are met:

- (a) a change in the pattern of trade between third countries and South Africa or the common customs area of the Southern African Customs Union;
  - (i) which results from a practice, process or work;
  - (ii) for which there is no or insufficient cause or economic justification other than 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 products under investigation;
- (c) dumping can be found in relation to normal values previously established for the like or similar products.

60.2 For purposes of anti-circumvention the following types of circumvention shall be treated separately:

- (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) minor modifications to the product subject to anti-dumping duty;
- (c) the export of parts, components and sub-assemblies with assembly in a third country or within the common customs area of the Southern African Customs Union;
- (d) absorption of the anti-dumping duty by either the exporter or the importer;
- (e) country hopping, as defined in section 60.8;
- (f) declaration under a different tariff heading, even where such different tariff heading does provide for the clearance of that product;
- (g) any other form of circumvention as may be submitted for the Commission's consideration.

60.3 Any instance of circumvention as contemplated in subsection 2(a) shall be referred to the Commissioner for 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.

60.4 Minor modifications of the product shall be deemed to have taken place if the subsequently exported product –

- (a) has materially the same production processes, uses the same raw materials and have basically the same physical appearance or characteristics; or
- (b) is a substitute for the product on which anti-dumping duties have been imposed.

- 60.5 Assembly in a third country or within the common customs area of the Southern African Customs Union shall be deemed to take place if the value added in such third country or in the common customs area of the Southern African Customs Union does not exceed 25 per cent or does not constitute a major transformation process. Such assembly shall not be regarded as changing the country of origin.
- 60.6 The value added in terms of subsection 5 shall be determined with reference to the direct and indirect costs of production only and shall not include selling, general, administrative or packaging expenses or profit.
- 60.7 Absorption of the anti-dumping duty shall be deemed to take place if -
- (a) the exporter decreases its export price in any manner to compensate the importer or a third party for the extra burden imposed by the anti-dumping duties, unless there is a correspondent decrease in the normal value of the product;
  - (b) the importer does not increase its price in line with the anti-dumping duties, unless such importer can provide evidence indicating that it absorbed such anti-dumping duties without assistance from any other party and only from revenue generated by the specific product in question; or
  - (c) in cases involving tenders, the tender price is not increased by the effect of the anti-dumping duty.
- 60.8 Country hopping 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.

**61 Information required**

- 61.1 The SACU industry or other interested party shall provide such information that is reasonably available to it to indicate that circumvention is taking place.
- 61.2 Any request for an anti-circumvention review shall include information of the specific type of circumvention that is alleged to take place.

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

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

## **62 Review procedure**

62.1 An anti-circumvention review may consist of either a preliminary and a final, or only of a single, investigation phase.

62.2 Provided an anti-circumvention complaint is lodged with the Commission prior to or within one year of the publication of the Commission's final determination, the SACU industry shall not be required to update its injury information.

62.3 Provided an anti-circumvention complaint is lodged with the Commission prior to or within one year of the publication of the Commission's final finding, and in relation to any circumvention alleged in section 60.2(b), (c), (d), (e), (f) or (g), the Commission may use the normal values previously established to determine the margin of dumping until such time as the exporter or foreign producer has submitted proper information. Provisional payments may be imposed on the basis of the margin of dumping so determined.

62.4 In the event that the relevant interested parties have not submitted appropriate information before the deadline contemplated in section 42, the Commission may make a preliminary or final determination on the basis of the facts available available.

62.5 In the event of an adverse preliminary finding as contemplated in subsection 4, and provided the relevant interested party had submitted at least a substantial, if deficient, response by the deadline contemplated in section 42, such party will receive the opportunity to address any deficiencies within a reasonable time and such additional information will be taken into consideration by the Commission in its final finding.

62.6 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.

62.7 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.

### **63 Final recommendation**

If the Commission makes a finding that circumvention has taken place the Commission's final recommendation may result in

- (a) the increase of anti-dumping duties to compensate for absorption of anti-dumping duties;
- (b) the extension of the scope of the anti-dumping duties to apply to parts, components or substitute like products, new models and the like;
- (c) the extension of the anti-dumping duties, at the required level, to the supplier in the country from which the product is exported subsequent to the imposition of the original provisional payments or anti-dumping duties or the initiation of the original investigation, including to parts, components or substitute like products, new models and the like.

## **Sub-Part VI – Judicial Reviews**

### **64 Judicial reviews**

64.1 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's 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.

64.2 Interested parties must give the Commission at least 30 days' notice prior to filing any judicial review relating to preliminary or final determinations.

- 64.3 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.
- 64.4 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.

#### **Sub-Part VII – Refunds**

##### **65 Applications for refunds**

- 65.1 An importer or an exporter 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.
- 65.2 Other than as contemplated in section 66, any request, containing all prescribed 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.
- 65.3 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.
- 65.4 Regardless of whether the exporter and the importer are related parties, the exporter may supply any information contemplated in subsection 3 direct to the Commission.
- 65.5 The Commission may, at any time after receiving a refund application, decide to initiate an interim review, whereupon the information and findings from such interim review shall be used to determine whether a refund is justified.

**66 Refunds following interim reviews**

Where the Commission, following an interim 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 E – Final Provisions****67 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.

**68 Transitional application**

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

68.2 Until such time as separate countervailing regulations have been promulgated the anti-dumping regulations shall apply *mutatis mutandis* to countervailing investigations.