

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. R. 652

31 JULY 2015

AMENDED TARIFF INVESTIGATIONS REGULATIONS

By virtue of the powers vested in me in terms of section 59 of the International Trade Administration Act, 2002 (Act No. 71 of 2002), I, Ebrahim Patel, Minister of Economic Development, hereby amend the Tariff Investigations Regulations published under Government Notice No. R. 397 in Government Gazette No. 28767 of 28 April 2006, by the amendment of all sections, through the Amended Tariff Investigations Regulations going herewith.



EBRAHIM PATEL

MINISTER OF ECONOMIC DEVELOPMENT

REPUBLIC OF SOUTH AFRICA

THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

AMENDED TARIFF INVESTIGATIONS REGULATIONS

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REGULATIONS

Part A – Definitions

1. Definitions

“**Act**” means the International Trade Administration Act, 2002 (Act No. 71 of 2002), as amended from time to time.

“**applicant**” means a domestic party submitting an application as provided for in section 6 for purposes of initiating an investigation.

“**Commission**” means the International Trade Administration Commission of South Africa established in terms of section 7 of the Act.

“**correspondence**” means any written communication by a party submitted by hand delivery, mail, facsimile or electronically to the Commission for purposes of an investigation.

“**customs duty**” means any duty leviable under Part 1 of Schedule No. 1 to the Customs and Excise Act, 1964 (Act No. 91 of 1964) on imported goods.

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

“**domestic**” as used in these regulations relates to industries within the SACU.

“**good cause**” for an extension of the deadline for the submission of information, as referred to in sections 12.4 and 20.4, does not include merely citing insufficient time to complete a response.

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

- (a) SACU producers;
- (b) SACU exporters;
- (c) SACU importers;
- (d) trade or business associations whose members are SACU producers, exporters or importers; and
- (e) trade unions whose members are employees of SACU producers.

This does not preclude the Commission from accepting, on its own initiative or upon request, other parties as interested parties in an investigation.

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

“rate of effective protection” means the rate of protection applicable to the value added process given the nominal rates of duty protection on the input materials and the end product.

“SACU” means, as per the SACU Agreement of 2002, the Southern African Customs Union between –

- (a) the Republic of Botswana;
- (b) the Kingdom of Lesotho;
- (c) the Republic of Namibia;
- (d) the Republic of South Africa; and
- (e) the Kingdom of Swaziland.

“SACU Agreement” means the Agreement establishing SACU, as referred to in the Act.

“Tariff Board” means the SACU Tariff Board established by Article 7 of the SACU Agreement.

Part B – General Provisions

2. Scope of regulations

These regulations apply exclusively to investigations, and the applications that form part of such investigations, for –

- (a) the reduction or increase in the rate of a customs duty; and
- (b) the creation, amendment or removal of rebate or drawback provisions with regard to a customs duty.

3. Confidentiality

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

- (a) by nature confidential; or
 - (b) the person otherwise wishes to be recognised as confidential.
- 3.2 Parties providing information in any correspondence for which a claim of confidentiality is made as contemplated in subsection 1 shall at the same time submit non-confidential summaries thereof. These summaries shall –
 - (a) indicate 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.
- 3.3 Where confidential information does not permit non-confidential summarisation as contemplated in subsection 2, 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.
- 3.4 The following list provides examples of “information that is by nature confidential” as per sections 1(2) and 33(1)(a) of the Act, read with section 36 of the *Promotion of Access to Information Act, 2000* (Act No. 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 a significant adverse effect on the owner of, or the person that provided, the information; and
 - (g) information that would be of significant competitive advantage to a competitor of the owner of the information;

provided that the party submitting such information indicates it to be confidential.

- 3.5 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 Act.
- 3.6 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 5; or
 - (b) is not accompanied by –
 - (i) a proper non-confidential summary as contemplated in subsection 2; or
 - (ii) a sworn statement as contemplated in subsection 3; andthe deficiency has not been rectified in accordance with the instructions of the Commission.
- 3.7 In determining whether to disregard information indicated to be confidential where the requirement in subsection 6(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.

4. Representation

- 4.1 Should an interested party wish to be represented by an outside party in an investigation, 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, signed by –
- (a) its chief executive officer or other person having similar executive authority where there is no chief executive officer position; or
 - (b) a duly appointed and authorised representative of the interested party.

- 4.2 Where a letter of appointment is signed by a representative as provided for in subsection 1(b), written proof of the appointment and authorisation of the representative must also be provided.
- 4.3 Should an interested party wish to terminate a representation provided for in subsection 1 earlier than indicated in the letter of appointment provided to the Commission, such party must provide the Commission with a letter to this effect. The letter must comply with the requirements of subsections 1 and/or 2, as applicable, regarding signatures.
- 4.4 Once an interested party has appointed a representative, communications between the Commission and the interested party may take place through the appointed representative.
- 4.5 Notwithstanding subsection 4, the Commission may communicate with an interested party directly.

5. Oral presentations

- 5.1 An interested party may request in writing to make an oral presentation during an investigation. As part of the request, the party shall indicate reasons for not relying on written submissions only.
- 5.2 The Commission may refuse a request for an oral presentation if, amongst others –
- (a) substantially similar information has been submitted to the Commission in the investigation;
 - (b) a written submission, in the Commission's view, adequately sets out the matter intended for an oral presentation; or
 - (c) a presentation would unduly delay the finalisation of an investigation.

- 5.3 An interested party requesting an oral presentation shall provide the Commission with a written agenda for the presentation at such time as directed by the Commission.
- 5.4 The Commission may limit or add to the agenda contemplated in subsection 3 and may structure the proceedings as it deems appropriate.
- 5.5 All information presented during an oral presentation shall be reduced to writing by the interested party making the presentation and a non-confidential version shall be provided by such party, which will be placed on the public file.

6. Submission of applications

- 6.1 Applications must be submitted in writing and in the manner and form determined by the Commission. Applications in the form of questionnaires are available on the Commission's website (www.itac.org.za). The Commission may amend the questionnaires as required in a particular matter or may forgo, in whole or in part, the use of a questionnaire, provided an applicant provides the Commission with sufficient information to allow it to reasonably understand the nature of, and the basis for, the requested investigation.
- 6.2 Where confidential information is being submitted by an applicant, a non-confidential version of the application conforming to the requirements of section 3 must be submitted with the application.
- 6.3 Applications referred to in subsection 1 must be submitted by mail, facsimile, hand delivery or electronically. If submission is made by mail, the application must be addressed to the Senior Managers: Tariff Investigations using the address indicated on Commission's website (www.itac.org.za). If submission is made by hand delivery, the application must be delivered to the Senior Managers: Tariff Investigations at the address indicated on the Commission's website (www.itac.org.za).

- 6.4 If an applicant submits an application by facsimile or electronically, it must also provide the Commission with the original, signed hard copy of the application in the manner provided for in subsection 3 within 14 days after the transmission of the facsimile or electronic version of the application.

7. Computation of periods of time

- 7.1 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 or public holiday, or such other day when the Commission is closed for business, in which case the deadline will be the next business day.
- 7.2 Where a deadline is indicated by these regulations or the Commission, a submission must reach the Commission by the deadline indicated.
- 7.3 Unless expressly otherwise provided for, a party shall be deemed to have received a written communication from the Commission –
- (a) in the case of transmission by facsimile or electronically, on the day the written communication is transmitted by the Commission;
 - (b) in the case of same-day, overnight or registered mail, on the day the written communication is delivered to a party; or
 - (c) in the case of regular mail, 7 working days after the written communication is placed in the post by the Commission.

8. Public file

- 8.1 A public file will be kept in all investigations and all non-confidential documents will be kept in this file.
- 8.2 The public file in an investigation may be accessed by making an appointment with the investigating official identified in the Publication

Notice of an investigation or any investigating official subsequently appointed to lead the investigation.

9. Additional information

The Commission may request or gather information at any stage of an investigation, including the application stage.

10. Assessment criteria

10.1 The Commission's evaluation of applications and its findings in investigations are based on a case-by-case approach and are informed by the industrial policy and economic objectives of government. Tariff amendments, in the form of the reduction or increase in the rate of a customs duty or the creation, amendment or removal of rebate or drawback provisions, are also conditional on a commitment by beneficiaries on how they will perform against government's set policy objectives, including plans to increase production, investment and employment.

10.2 In evaluating applications and making findings in investigations, the Commission may consider, as applicable, the following factors as these relate to the product that is the subject of the investigation:

- (a) the domestic industry's production capacity and potential;
- (b) employment, including considerations of labour intensity and labour demographics of the relevant industrial sector;
- (c) investment;
- (d) price differentials between the domestically manufactured product and the imported product;
- (e) market shares;
- (f) import and export data;
- (g) demand and supply conditions;
- (h) the financial state of the domestic industry, including profitability and return on investment ratios;
- (i) price and cost structures;

- (j) the rate of effective protection; and
- (k) the availability of a domestically manufactured identical or substitute product.

This list of factors is not exhaustive. The Commission will decide the relative weight to be given to any one factor on a case-by-case basis.

Part C – Procedures

Sub-Part I – General

11. Verifications

- 11.1 The Commission may satisfy itself as to the accuracy of the information supplied to it by any interested party by conducting verifications at such time and place as it deems necessary, including verification visits at the premises of the interested party that provided the information.
- 11.2 The Commission may inform the interested party concerned of the dates of an intended verification visit, and where such information is provided, the verification will be conducted on those dates unless such party objects to the verification.
- 11.3 In the event that the interested party to be verified is from another Member State in the SACU, the Government of the Member State and the SACU Secretariat will also be informed of the proposed date of the verification visit.
- 11.4 Where for purposes of verification an interested party –
 - (a) refuses to attend a verification or refuses to receive a verification visit by the Commission;
 - (b) refuses the Commission access to relevant information;
 - (c) fails to provide information within an applicable deadline;
 - (d) fails to supply relevant substantiating evidence required by investigating officers; or
 - (e) otherwise acts so as to materially impede the verification process;

the Commission may terminate any verification activities or proceedings and may disregard all the information submitted by that party. The Commission may nevertheless consider information received from the interested party that was properly submitted and verified.

12. Verification reports

- 12.1 Following a verification visit, the Commission shall make a verification report indicating what information was verified available to the interested party that was verified.
- 12.2 The purpose of a verification report is to allow the Commission and the interested party who was subject to the Commission's verification to identify the information that was verified by the Commission. The failure to agree on the information verified or reference in the verification report information that was verified shall not preclude the Commission from using such information in its findings.
- 12.3 The Commission will place a copy of the non-confidential verification report on the public file.
- 12.4 The interested party verified will receive 7 days to comment on the verification report. The Commission may grant a single extension upon good cause shown.

13. Investigating officials

Applications received by the Commission are allocated to investigating officials. Applicants and other parties must address all communications related to the application for the attention of the responsible investigating official.

Sub-Part II – Pre-Initiation Procedures**14. Acknowledgement of receipt**

- 14.1 Upon receipt of an application, the Commission will provide applicants with written acknowledgement of receipt by mail, facsimile or electronically.
- 14.2 The letter of acknowledgement will contain the investigating official's name and contact details to whose attention all communications must be addressed as provided for in section 13.

15. Deficient applications

- 15.1 An application may be regarded as materially deficient, and the Commission may in its discretion decide not to process the application, if one or more of the following is applicable:
- (a) The application is not in the manner and form determined by the Commission;
 - (b) The information requested in the application is not submitted;
 - (c) The application contains conflicting information;
 - (d) The application contains incorrect information; or
 - (e) The application contains confidential information and the applicant fails to provide –
 - (i) a proper non-confidential version in conformity with the requirements of section 3.2; or, where applicable
 - (ii) a sworn statement as contemplated in section 3.3
- 15.2 Notwithstanding subsection 1, where an application does not contain all the requested information because an applicant, despite reasonable efforts, was not able to obtain the information or has only similar information, the Commission may exercise its discretion whether to regard the application as materially deficient.
- 15.3 In the case of a deficient application, the Commission shall inform an applicant in writing that the application is deficient.

- 15.4 An applicant who submitted a deficient application must provide the Commission with a corrected application and/or a proper non-confidential version or sworn statement within the time period indicated in the Commission's deficiency letter provided for in subsection 3.
- 15.5 If an applicant fails to provide the Commission with a corrected application and/or a proper non-confidential version or sworn statement within the time period provided for in the Commission's deficiency letter, the Commission will refer the application back to the applicant.

Sub-Part III – Preliminary Investigation Phase

16. Preliminary Commission evaluation of an application

- 16.1 Once an application has been accepted as duly completed, the Commission shall evaluate whether to accept or reject the application.
- 16.2 If the Commission accepts an application, it shall publish a notice as provided for in section 17.1.
- 16.3 If the Commission rejects an application, the applicant shall be informed in writing of the decision and the reasons therefore.

17. Initiation

- 17.1 An investigation is initiated by means of a Publication Notice in the *Government Gazette* where –
- (a) the Commission has accepted an application, as provided for in section 16.2; or
 - (b) the Commission is self-initiating an investigation.
- 17.2 In instances of self-initiation by the Commission, there will not be an application as provided for in section 6.

17.3 The Commission may self-initiate an investigation for a number of reasons, including, but not limited to, the following:

- (a) to review the customs duty related to a product or a range of products; or
- (b) upon request by a government entity.

18. Publication notice

18.1 The Publication Notice initiating an investigation will ordinarily contain the following information:

- (a) the name of the applicant;
- (b) the nature of the application;
- (c) a summary of the stated reasons for the application;
- (d) the name and contact details of the investigating official;
- (e) the reference number of the application; and
- (f) the time period for interested parties to comment.

18.2 The Commission shall inform the SACU Secretariat of its decision to initiate an investigation. The Commission may also directly inform known industry associations, trade unions and other role players within the affected industry of the initiation decision.

18.3 Subsequent to the publication referred to in section 17.1, interested parties may request the non-confidential version of the application referred to in section 6. The non-confidential version of the application will also be available on the public file referred to in section 8.

19. Termination of an investigation

19.1 If an applicant withdraws its application after an investigation has been initiated, the Commission may –

- (a) terminate the investigation at any time thereafter; or
- (b) disregard the withdrawal of the application and continue with the investigation.

- 19.2 If the Commission disregards the withdrawal of an application and continues with an investigation as contemplated in subsection 1(b), it shall inform all known interested parties of the reasons for its decision and continue the investigation in its own name.
- 19.3 If the Commission has self-initiated an investigation, it may terminate the investigation at any time.

Sub-Part IV – Final Investigation Phase

20. Comments on publication notice

- 20.1 Comments must be in writing and may be submitted by hand, mail, facsimile or electronically, and must be received by the Commission by the date indicated in the Publication Notice.
- 20.2 If the comments referred to in subsection 1 are confidential, a non-confidential version of the comments, conforming to the requirements of section 3, must be submitted with the confidential comments.
- 20.3 Comments that are not accompanied by a non-confidential version or are not otherwise clearly indicated to be confidential may be treated as non-confidential.
- 20.4 The Commission may grant a single extension of the comment period provided for in subsection 1 on good cause shown. This extension will not be longer than 14 days except under exceptional circumstances as approved by the Commission.
- 20.5 Any request for an extension must be submitted in writing normally at least 2 days prior to the deadline provided for in subsection 1, and must contain a detailed motivation for the request.
- 20.6 Any extension granted in terms of subsection 5 will apply only to the party to which such extension was granted and will not apply to other parties.

21. Deficiencies in comments received

- 21.1 Comments submitted in terms of section 20 that contain confidential information will be deemed deficient if not accompanied by, as applicable –
- (a) a proper non-confidential version in conformity with the requirements of section 3.2; or
 - (b) a sworn statement as contemplated in section 3.3.
- 21.2 The Commission will provide an interested party with a letter indicating any deficiencies in terms of subsection 1. The Commission's deficiency letter will set out the time period in which to address any deficiencies.
- 21.3 The Commission may disregard comments that are deficient after the deadline contemplated in subsection 2 for the purpose of its final finding.

22. Final Commission evaluation of an application and finding

- 22.1 The Commission shall evaluate the information obtained in connection with an investigation and shall forward a final finding in the form of a recommendation to approve or reject an application, together with a ministerial minute or a report setting forth the results of its evaluation, to the Minister, unless the provisions of section 64(2) of the Act are in operation, in which case such recommendation and report shall also be forwarded to the SACU Tariff Board.
- 22.2 The Commission shall inform an applicant in writing of, as applicable –
- (a) the approval of its application and the reasons therefore after the Minister has considered the Commission's recommendation and made a decision to approve the application and the Minister's decision has been implemented by the South African Revenue

Service through the publication of a notice in the *Government Gazette*; or

- (b) the rejection of its applications and the reasons therefore after the Minister has considered the Commission's recommendation and made a decision to reject the application.

- 22.3 The Commission will publish the outcome of its investigations on its official website after the relevant action by the Minister and/or the South African Revenue Service contemplated in subsection 2 has been taken.

Part D – Final Provisions

23. Submission of same or substantially similar applications

- 23.1 The Commission will not accept, except under exceptional circumstances, an application for evaluation under section 16 that deals with the same or a substantially similar matter to that of an application submitted to and evaluated by the Commission earlier in time under section 16 until the expiry of 12 months after the date on which, as applicable –

- (a) the application submitted earlier in time was rejected pursuant to section 16; or
- (b) the Minister made a decision on the application as contemplated in section 22.

- 23.2 Subsection 1 is not applicable to investigations self-initiated by the Commission in terms of section 17.1.

24. Delegation

Other than the decision-making powers concerning the evaluation whether to accept or reject an application as provided for in section 16, the initiation of investigations as provided for in section 17 and the Commission's final finding as provided for in section 22, the

Commission may delegate and the Commission staff may perform any of the functions in respect of customs duty investigations provided for in these regulations.

25. Application of Regulations

These regulations shall apply to all applications and investigations provided for in section 2 that were received or initiated after their promulgation.