

WORLD TRADE ORGANIZATION

G/ADP/N/1/ZAF/2
G/SCM/N/1/ZAF/2
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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

Original: English

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

SOUTH AFRICA

The following submission, dated 15 January 2004, is being circulated at the request of the Delegation of South Africa.

Further to the requirements under the Agreement on Anti-Dumping Practices and the Agreement on Subsidies and Countervailing Measures and in accordance with the related decisions adopted by the Committees established under these Agreements, I have the honour to provide a copy of the full text of the International Trade Administration Act, No. 71 of 2002, relevant extracts from the Customs and Excise Act, No. 91 of 1964, as amended, and a copy of the Anti-Dumping Regulations prescribed by the Minister of Trade and Industry on 14 November 2003. This notification replaces South Africa's notifications circulated under document G/ADP/N/1/ZAF/1 and G/SCM/N/1/ZAF/1 of 8 December 1995.

THE PRESIDENCY

No. 123

22 January 2003

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

NO. 71 OF 2002: INTERNATIONAL TRADE ADMINISTRATION ACT, 2002

(English text signed by the President.)
(Assented to 30 December 2002.)

ACT

To establish the International Trade Administration Commission; to provide for the functions of the Commission and for the regulation of its procedures; to provide for the implementation of certain aspects of the Southern African Customs Union (SACU) Agreement in the Republic; to provide, within the framework of the SACU Agreement, for continued control of import and export of goods and amendment of customs duties; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

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CHAPTER 1

DEFINITIONS, INTERPRETATION, OBJECT AND APPLICATION OF ACT

1. Definitions and interpretation

1. (1) A reference in this Act to an Article by number is a reference to such Article in the SACU Agreement.

(2) In this Act unless the context indicates otherwise-

"Cabinet" means the body referred to in section 91 of the Constitution;

"claimant" means a person who has filed a claim in terms of Part D of Chapter 4, with regard to the confidentiality of information;

"Commission" means the International Trade Administration Commission established by section 7;

"committee" means a committee of the Commission;

"Common Customs Area" means the combined areas of the Member States of SACU;

"confidential information" means information that is-

- (a) by nature, confidential; or
- (b) recognised in terms of Part D of Chapter 4, to be otherwise confidential;

"countervailing duty" means a customs duty imposed to off-set the benefit conferred by a subsidy;

"Customs and Excise Act" means the Customs and Excise Act, 1964 (Act No. 91 of 1964);

"customs duty" means customs duty as defined in section 1 of the Customs and Excise Act;

"dumping" means the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of those goods;

"export" means to take or send goods, or to cause them to be taken or sent, from the Republic to a country or territory outside the Republic;

"goods" includes-

- (a) all wares, articles, merchandise, animals, currency, material or objects of whatsoever nature; and
- (b) in relation to any particular goods, any other goods that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;

"import" means to bring goods, or cause them to be brought, from outside the Republic into the Republic;

"information that is by nature confidential" means trade, business or industrial information that-

- (a) belongs to a person or the State;
- (b) has a particular economic value; and
- (c) is not generally available to or known by others, and the disclosure of which could-
 - (i) result in a significant adverse effect on the owner, or on the person that provided the information; or
 - (ii) give a significant competitive advantage to a competitor of the owner;

"member" means a member of the Commission;

"Member State" means a member of SACU;

"Minister" means the member of the Cabinet responsible for trade and industry;

"Minister of Finance" means the member of the Cabinet responsible for national finance;

"National Body" means a body or institution established or designated by a Member State, as contemplated in Article 14;

"organ of state" has the meaning set out in section 239 of the Constitution;

"person" includes, among other things, a trust;

"premises" includes land or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

"prescribed" means prescribed by regulation in terms of this Act;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"regulation" means a regulation made under this Act;

"regulatory authority" means an entity established in terms of national or provincial legislation responsible for regulating an industry or a sector of an industry;

"SACU" means the Southern African Customs Union established by Article 3;

"SACU Agreement" means-

- (a) the agreement establishing SACU, and attached as Schedule 1 to this Act; and
- (b) any annex to that agreement developed by the SACU Council as contemplated in Article 42, once such an annex has become law in the Republic;

"SACU Commission" means the Customs Union Commission established by Article 7;

"SACU Council" means the Council of Ministers established by Article 7;

"SACU Tribunal" means the Tribunal established by Article 7;

"safeguard measure" means a remedy or procedure for use in response to disruptive competition;

"Tariff Board" means the SACU Tariff Board established by Article 7; and

"this Act" includes the regulations and Schedules, other than Schedule 1.

(3) This Act must be interpreted-

- (a) in a manner that is consistent with the Constitution and gives effect to the object set out in section 2; and
- (b) in a manner that is consistent with the purposes and intent of the SACU Agreement.

2. Object of Act

2. The object of the Act is to foster economic growth and development in order to raise incomes and promote investment and employment in the Republic and within the Common Customs Area by establishing an efficient and effective system for the administration of international trade subject to this Act and the SACU agreement.

3. Application of Act

3. (1) Subject to subsection (2), this Act applies to all economic activity within, or having an effect within, the Republic.

(2) Sections 6, 26(1)(a) and 26(2)(a) and Part B of Chapter 4 do not apply to the export or import of goods in respect of which the Minister of Defence has issued a notice in terms of section 4C(1)(a) of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), prohibiting the-

- (a) export or import of those goods; or
- (b) export or import of those goods except under authority of and in accordance with the conditions stated in a permit referred to in section 4C(1)(a)(ii) or (vi) of that Act.

CHAPTER 2

TRADE POLICY

4. Implementation of SACU Agreement

4. (1) The Minister is the head representative of the Republic to the SACU Council.

(2) The Minister may-

- (a) assign representatives of the Republic to any institution constituted by or in terms of the SACU Agreement; and

- (b) exercise any right of the Republic in terms of the SACU Agreement to nominate or appoint persons to fill any office constituted by or in terms of the SACU Agreement.
- (3) The Minister is the head representative of the Republic in any consultations with Member States individually or collectively as contemplated in the SACU Agreement and represents the Republic in any consultations arising in terms of Article 13(4) and (5) and Article 15.
- (4) The Commission may, in accordance with this Act, exercise the right of the Republic to grant a rebate of customs duties, as contemplated in Article 20(3).
- (5) SACU is recognised as a juristic person for all purposes of law within the Republic.
- (6) The Minister may refer any decision of the SACU Council of Ministers that concerns customs duties or other measures to the Minister of Finance as a request contemplated in the Customs and Excise Act.
- (7) The Minister must, by notice in the Gazette, publish-
 - (a) for information any recommendation of the Tariff Board; and
 - (b) any decision by the SACU Council of Ministers that directly affects the import of goods into, or export of goods from, the Republic.
- (8) The Minister may, by notice in the Gazette, publish any policy mandate, procedure, guideline formulated by the SACU Council of Ministers or application being dealt with by a SACU Member State.

5. Trade policy statements and directives

- 5. The Minister may, by notice in the Gazette and in accordance with procedures and requirements established by the Constitution or any other relevant law, issue Trade Policy Statements or Directives.

6. Minister's power to regulate imports and exports

- 6. (1) The Minister may, by notice in the Gazette, prescribe that no goods of a specified class or kind, or no goods other than goods of a specified class or kind, may be-
 - (a) imported into the Republic;
 - (b) imported into the Republic, except under the authority of and in accordance with the conditions stated in a permit issued by the Commission;
 - (c) exported from the Republic; or
 - (d) exported from the Republic, except under the authority of and in accordance with the conditions stated in a permit issued by the Commission.
- (2) For the purpose of subsection (1) goods may be classified according to-
 - (a) their source or origin;

- (b) their intermediate or final destination;
- (c) the channels along which they are transported;
- (d) the manner in which they are imported or exported;
- (e) the purposes for which they are intended to be used;
- (f) the methods or processes by which they are produced;
- (g) the use of non-renewable natural resources in their production, and their life-cycle impact on the natural environment; or
- (h) any other classification methods determined by the Minister.

(3) A notice issued in terms of this section applies to any person who, at the time of the import of particular goods into the Republic, or the export of particular goods from the Republic-

- (a) owns those goods;
- (b) carries the risk of those goods;
- (c) takes or attempts to bring those goods into, or takes or attempts to take those goods from, the Republic;
- (d) in any manner whatsoever has a beneficial interest in those goods;
- (e) acts on behalf of a person referred to in paragraph (a), (b), (c) or (d); or
- (f) pretends to be a person referred to in paragraph (a), (b), (c), (d) or (e).

(4) Despite any other provision of this Act, a notice issued in terms of this section in respect of goods that are the subject of a notice issued by the Minister of Defence in terms of section 4C(1)(a) of the Armaments Development and Production Act, 1968, is deemed to have been revoked as from the date of the latter notice.

CHAPTER 3

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

Part A

Establishment and constitution

7. Establishment and independence of Commission

7. (1) §The International Trade Administration Commission is hereby established, and-

- (a) has jurisdiction throughout the Republic;
- (b) is a juristic person; and

- (c) must exercise its functions in accordance with this Act and any other relevant law.
- (2) The Commission-
 - (a) is independent and subject only to-
 - (i) the Constitution and the law;
 - (ii) any Trade Policy Statement or Directive issued by the Minister in terms of section 5; and
 - (iii) any notice issued by the Minister in terms of section 6; and
 - (b) must be impartial and must perform its functions without fear, favour or prejudice.
- (3) Each organ of state must assist the Commission to maintain its independence and impartiality, and to exercise its authority and carry out its functions effectively.

8. Constitution of Commission

- 8. (1) (a) The Commission consists of-
 - (i) a full-time Chief Commissioner and a full-time Deputy Chief Commissioner; and
 - (ii) not less than two but not more than 10 other Commissioners, each appointed to serve either full-time or part-time, appointed by the President on the recommendation of the Minister, subject to section 9.
- (b) The Minister must, by notice in the Gazette and in any national newspaper, invite nominations for appointment of persons as members of the Commission.
- (c) The members of the Commission must, when viewed collectively, be representative of a broad cross-section of the population of the Republic, including women, and the President must endeavour to ensure participation by significant economic sectors.
- (2) The President must, when making an appointment in terms of subsection (1)(a)(ii), determine-
 - (a) whether the appointee is to be a full-time or part-time Commissioner; and
 - (b) the term of the appointment, which may not exceed five years.
- (3) If a vacancy arises as a result of the departure of a full-time Commissioner, the President may, on the recommendation of the Minister-
 - (a) leave the position vacant;
 - (b) if the member's term of office has expired, reappoint that member subject to section 9; or
 - (c) in any other case-

- (i) appoint a new member in accordance with subsection (2); or
 - (ii) on the request of a part-time member, transfer that part-time member to fill that vacancy on a full-time basis either for-
 - (aa) the remainder of that member's term of office; or
 - (bb) a term determined by the President in accordance with subsection (2).
- (4) If a vacancy arises as a result of the departure of a part-time Commissioner, the President may, on the recommendation of the Minister-
 - (a) leave the position vacant;
 - (b) if the member's term of office has expired, reappoint that member subject to section 9; or
 - (c) in any other case-
 - (i) appoint a new member on a part-time basis in accordance with subsection (2); or
 - (ii) on the request of a full-time member, transfer that member to fill that vacancy on a part-time basis either for-
 - (aa) the remainder of that member's term of office; or
 - (bb) a term determined by the President in accordance with subsection (2).
- (5) A person may not serve as Chief Commissioner for more than 10 consecutive years.
- (6) The Minister must, with the concurrence of the Minister of Finance, determine the remuneration, allowances, benefits and other terms and conditions of employment of the Chief Commissioner, Deputy Chief Commissioner and each other member of the Commission.
- (7) During the term of office of a member of the Commission, the Minister may not reduce the member's salary, allowances or benefits.
- (8) The Minister may determine any other conditions of appointment not provided for in this section, but any such conditions may not be of such a nature as to reduce the independence of the Commissioner concerned.

9. Qualifications of members

9. (1) To be eligible for appointment and to continue to hold office as a member of the Commission, a person must-
- (a) be ordinarily resident in the Republic; and
 - (b) have suitable qualifications and experience in economics, accounting, law, commerce, agriculture, industry or public affairs.

- (2) A person may not be a member of the Commission if that person-
- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
 - (b) is an unrehabilitated insolvent;
 - (c) has been found mentally unfit by an order of a competent court; or
 - (d) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

10. Conduct of members

10. (1) A member of the Commission, and a member of the staff of the Commission, must not-
- (a) engage in any activity that may undermine the integrity of the Commission;
 - (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a financial interest or any similar personal interest, as prescribed;
 - (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or
 - (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Commission.
- (2) If, at any time, it appears to a member of the Commission that a matter before the Commission concerns the financial or personal interest of that member, as prescribed, the member of the Commission must-
- (a) immediately and fully disclose the interest to the Chief Commissioner, or in the case of the Chief Commissioner, to the Deputy Chief Commissioner; and
 - (b) withdraw from any further involvement in the matter to the extent required by regulation.
- (3) A member of the Commission must comply with any prescribed code of conduct for members.

11. Resignation and removal from office

11. (1) A member of the Commission may, on one month's written notice addressed to the President-
- (a) resign from the Commission; or
 - (b) if he or she is a Chief or Deputy Chief Commissioner, resign from the post but remain as an ordinary member of the Commission.

- (2) The President, on the recommendation of the Minister-
- (a) must remove a member of the Commission from office if the member-
 - (i) ceases to be ordinarily resident within the Republic; or
 - (ii) economies subject to any of the disqualifications referred to in section 9(2); and
 - (b) may remove a member from office only for-
 - (i) serious misconduct;
 - (ii) permanent incapacity;
 - (iii) engaging in any activity that may undermine the integrity of the Commission; or
 - (iv) failure to satisfy the prescribed standards of professionalism, attendance and participation in the functions of the Commission.

12. Meetings and decisions of Commission

12. (1) The Chief Commissioner must convene the first meeting of the Commission and preside at that meeting.

(2) A majority of the members of the Commission present at a meeting of the Commission forms a quorum.

(3) The Chief Commissioner must appoint a member of the Commission as Chairperson to preside at meetings of the Commission.

(4) If the Chairperson is not present, the members present at the meeting must nominate a member to preside at that meeting.

(5) The decision of a majority of the members of the Commission present and voting on a matter is the decision of the Commission on that matter.

(6) In the case of an equality of votes, the person presiding at the meeting may cast a deciding vote in addition to his or her deliberative vote.

(7) The Commission may make rules of order for its proceedings, but any such rules of order must be consistent with this Act.

13. Chief Commissioner

13. (1) The Chief Commissioner is the Chief Executive Officer of the Commission, is responsible for the general administration of the Commission, and must-

- (a) perform the functions that are conferred on the Chief Commissioner by or in terms of this Act;

- (b) manage and direct the activities of the Commission; and
 - (c) supervise the staff of the Commission.
- (2) The Deputy Chief Commissioner-
- (a) may perform any functions of the Chief Commissioner as assigned by the Chief Commissioner; and
 - (b) must perform the functions of the Chief Commissioner whenever the-
 - (i) Chief Commissioner is unable for any reason to perform the functions of the Chief Commissioner; or
 - (ii) office of Chief Commissioner is vacant.
- (3) The Chief Commissioner may assign another member of the Commission to perform any functions of the Chief Commissioner when the Chief Commissioner or the Deputy Chief Commissioner is unable to perform those functions.

14. Committees

14. (1) The Minister may, by notice in the Gazette and at the request of the Commission-
- (a) establish one or more committees of the Commission for any purpose within or ancillary to the functions of the Commission; and
 - (b) appoint persons recommended by the Commission to be members of a committee.
- (2) A request to the Minister contemplated in subsection (1) to establish a committee must-
- (a) propose specific terms of reference for the committee;
 - (b) indicate whether the committee is a permanent committee or is established for a specific term;
 - (c) propose persons to be appointed to the committee and designate the proposed chairperson of the committee; and
 - (d) set out time limits within which the committee must report to the Commission.
- (3) A committee may consist of persons who are not members of the Commission but-
- (a) at least half of the members of each committee must be members of the Commission; and
 - (b) persons who are not members of the Commission may not vote.
- (4) If a committee is permanent, the Minister must determine the term of office for each person appointed to that committee.

(5) A committee decision is effective only if the decision is subsequently ratified by the Commission, unless the notice establishing the committee expressly authorises the particular decision to be effective without such ratification.

Part B

Functions of Commission

15. General functions of Commission

15. (1) The Commission must carry out the functions assigned to it in terms of this Act, any other Act or by the Minister.

(2) The Commission must carry out any function that arises out of an obligation of the Republic in terms of a trade agreement, if the Minister has assigned that function to the Commission.

(3) The Commission may, to the extent required or permitted by the SACU Agreement, refer matters to any institution constituted by or in terms of the SACU Agreement, and may appear before such an institution.

(4) The Commission may, subject to section 14(5), assign any of its functions to-

- a) member of the Commission;
- (b) a committee established in terms of section 14;
- (c) a member of the staff of the Commission;
- (d) a person referred to in section 23; or
- (e) any combination of persons referred to in this subsection.

16. Customs duties, anti-dumping duties, countervailing duties and safeguard measures

16. (1) The Commission must investigate and evaluate-

- (a) applications in terms of section 26 with regard to alleged dumping, or subsidised exports, in or into the Republic or the Common Customs Area;
- (b) applications in terms of section 26 with regard to safeguard measures;
- (c) applications in terms of section 26 with regard to amendment of customs duties in the Common Customs Area; and
- (d) matters with regard to safeguard measures or amendment of customs duties in the Common Customs Area, that the-
 - (i) Minister directs the Commission to consider; or
 - (ii) Commission considers on its own initiative.

(2) Sections 26 and 30(1)(a), each read with the changes required by the context, apply to an investigation undertaken by the Commission in terms of subsection (1)(d).

(3) The Commission may, after evaluating a matter in terms of subsection (1), take appropriate steps in accordance with this Act and the SACU Agreement and inform the Minister and the Tariff Board of its evaluation.

17. Issuing of permits or certificates

17. The Commission may investigate, evaluate and determine applications and issue or recommend the issuing of permits or certificates, in terms of-

- (a) the rebate and drawback provisions of the Customs and Excise Act; or
- (b) Part A and B of Chapter 4.

18. Monitoring trade and other matters

18. The Commission-

- (a) must monitor, review, report to the Minister on and, when appropriate, advise the Minister in respect of, any matter referred to it by the Minister that affects or might affect trade and industry; and
- (b) may investigate matters relating to its functions in terms of this Act.

19. Information sharing with SACU institutions and Member States

19. Subject to Part D of Chapter 4 and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Commission-

- (a) must provide information to the SACU Secretariat or one or more Member States, as required in terms of this Act or the SACU Agreement;
- (b) may request such information from the SACU Secretariat or one or more Member States, as permitted in terms of the SACU Agreement; and
- (c) may exchange information with the National Body established by any Member State.

20. Relations with SACU and Member States

20. The Commission may-

- (a) engage with an entity of SACU or the National Body of one or more Member States in co-operative activities of research, publication, education, staff development and training; or
- (b) in consultation with the Minister-
 - (i) engage with an entity of SACU or the National Body of any Member State in staff exchanges or secondment of staff; or

- (ii) provide technical assistance or expertise to, or request such assistance from, an entity of SACU or the National Body of a Member State.

21. Relations with domestic agencies

21. (1) The Commission may-

- (a) enter into an agreement with any regulatory authority or organ of state to co-ordinate and harmonise their respective functions with regard to international trade matters, in order to ensure the achievement of the objects of this Act; and
- (b) with regard to a particular matter within its jurisdiction-
 - (i) delegate its functions to such a regulatory authority or organ of state, as contemplated in section 238 of the Constitution; or
 - (ii) act in accordance with the agreement referred to in paragraph (a).

(2) A regulatory authority or organ of state that, in terms of any law, has jurisdiction over international trade matters may-

- (a) enter into an agreement referred to in subsection (1), with the Commission; and
- (b) with regard to a particular matter within its jurisdiction-
 - (i) delegate such matter to the Commission as contemplated in section 238 of the Constitution; or
 - (ii) act in accordance with the agreement referred to in paragraph (a).

(3) The Commission may-

- (a) participate in the proceedings of any regulatory authority or organ of state; and
- (b) advise, and receive advice from, any regulatory authority or organ of state.

22. Public information and reporting

22. (1) The Commission-

- (a) must implement measures to promote public awareness of the provisions of this Act; and
- (b) may provide advice to industry or interested persons in the prescribed manner and form.

(2) The Commission must report to the Minister on-

- (a) any matter relating generally to the implementation of the objects of this Act; and
- (b) the results of any investigation, monitoring or review carried out in terms of section 18.

(3) The Chief Commissioner must within six months after the end of the financial year of the Commission, prepare and submit to the Minister an annual report in the prescribed form, containing-

- (a) the audited financial statements prepared in terms of section 24(8);
- (b) the auditor-general's report, prepared in terms of section 24(9);
- (c) a report on the performance of the Commission and of activities undertaken in terms of this Act; and
- (d) any other information that the Minister may require.

(4) The Minister must table the annual report in Parliament within 14 days of receipt thereof if Parliament is sitting or, if Parliament is not then sitting, within 14 days of the commencement of the next sitting.

(5) The Minister may table in Parliament any other report submitted regarding-

- (a) a statement of the progress achieved during the preceding year towards realisation of the objects of this Act; and
- (b) any other information determined by the Minister.

Part C

Staff, finances and administration of Commission

23. Staff of Commission

23. (1) The Chief Commissioner may-

- (a) appoint staff or enter into contracts with other persons to assist the Commission in carrying out its functions; and
- (b) in consultation with the Minister and with the concurrence of the Minister of Finance, determine the remuneration, allowances, benefits and other terms and conditions of appointment of each member of the staff.

(2) The Minister may, with the concurrence of the Minister of Finance, determine the remuneration paid to a person who is appointed in terms of subsection (1), but who is not in the full-time service of the Commission.

24. Finances of Commission

24. (1) The Commission is financed from-

- (a) money that is appropriated by Parliament;
- (b) prescribed fees;

- (c) income derived from the investment and deposit of surplus money in terms of subsection (6); and
 - (d) money received from any other source.
- (2) The financial year of the Commission is the period from 1 April in any year to 31 March in the following year, except that the first financial year begins on the date that this Act comes into operation, and ends on 31 March next following that date.
- (3) Each year, at a time determined by the Minister, the Commission must submit to the Minister a statement of its estimated income and expenditure, and the requested appropriation from Parliament, in respect of the next ensuing financial year.
- (4) The Commission must open and maintain an account in its name with a registered bank, or other registered financial institution, in the Republic, and-
 - (a) deposit any money received into that account; and
 - (b) every payment made on its behalf must be made from that account.
- (5) Cheques drawn on the account of the Commission must be signed on its behalf by two persons authorised for that purpose by a resolution of the Commission.
- (6) The Commission may invest or deposit money that is not immediately required for contingencies or to meet current expenditures in-
 - (a) a call or short-term fixed deposit account with any registered bank or financial institution in the Republic; or
 - (b) an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (7) The Chief Commissioner is the accounting authority of the Commission in terms of the Public Finance Management Act.
- (8) The Chief Commissioner must prepare financial statements for the Commission within six months after the end of each financial year in accordance with established accounting practice, principles and procedures, consisting of-
 - (a) a statement reflecting, with sufficient particulars, the income and expenditure of the Commission during the preceding financial year; and
 - (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.
- (9) The Auditor-General must each year audit the financial records of the Commission.

25. Liability

25. The State Liability Act, 1957 (Act No. 20 of 1957), read with the changes required by the context, applies to the Commission, but a reference in that Act to "the Minister of the Department concerned" must be interpreted as referring to the Chief Commissioner of the Commission.

CHAPTER 4

INVESTIGATION, EVALUATION AND ADJUDICATION PROCEDURES

Part A

Applications

26. Applications

26. (1) A person may, in the prescribed manner and form, apply to the Commission for-

- (a) an import or export control permit, or an amendment of such a permit, in terms of Part B of this Chapter and the regulations;
- (b) a rebate permit or certificate in terms of the Customs and Excise Act;
- (c) the amendment of customs duties, including an amendment in respect of goods imported into the Common Customs Area from a country that is not a Member State, with regard to-
 - (i) anti-dumping duties;
 - (ii) countervailing duties; or
 - (iii) safeguard duties; or
- (d) the imposition of safeguard measures other than a customs duty amendment.

(2) The Commission must, subject to section 30(1) and (2), evaluate the merits of every application received by it and dispose of each application-

- (a) received in terms of subsection (1)(a) or (b), in accordance with Part B of this Chapter; or
 - (b) received in terms of subsection (1)(c) or (d), in accordance with Part C of this Chapter.
- (3) (a) The Commission may, before considering an application, give notice of the application in the Gazette.
- (b) If it does so, the Commission must-
- (i) allow interested parties the prescribed time to make written representations concerning the application; and
 - (ii) ensure that notice of its decision or recommendation in the matter is subsequently published in the Gazette.

- (4) The Commission may-
- (a) require an applicant to provide additional information in respect of the application; or
 - (b) request further information from any person who makes a representation in terms of subsection (3)(b).
- (5) Any person may voluntarily file with the Commission any document, affidavit or statement of the views of that person with regard to the application, or other relevant information.
- (6) The Commission may amend or revoke a decision or recommendation concerning an application if-
- (a) the decision or recommendation was based on incorrect information and the applicant or supplier of the information-
 - (i) was responsible for the error in the information; and
 - (ii) benefited or could have benefited, from the decision or recommendation;
 - (b) the decision was obtained by deceit; or
 - (c) a person has breached an obligation attached to the decision or recommendation.

Part B

Import and export control permits and rebate permits

27. Authority of Commission to issue import and export permits and rebate permits

27. (1) (a) The Commission must, after evaluating an application made in terms of section 26(1) (a) or (b)-
- (i) refuse the application; or
 - (ii) approve the application in whole or in part and with or without conditions.
- (b) If it approves the application, the Commission must take appropriate steps to give effect to its decision in accordance with this Act or the Customs and Excise Act.
- (2) A permit issued under subsection (1) may, with regard to the goods in question, prescribe-
- (a) the quantity or value of goods which may be imported or exported;
 - (b) the price at which the goods may be imported or exported;
 - (c) the period during which the goods may be imported or exported;
 - (d) the port through or from which the goods may be imported or exported;
 - (e) the country or territory from or to which the goods may be imported or exported;

- (f) the manner in which the goods may be imported or exported;
- (g) conditions relating to the possession, ownership or disposal of the goods after they have been imported, or the use to which they may be put; or
- (h) any other related conditions.

(3) Despite any other provision of this Act, a permit issued in terms of this section with regard to goods that are the subject of a notice issued by the Minister of Defence in terms of section 4C(1)(a) of the Armaments Development and Production Act, 1968, is deemed to have been revoked as of the date of that notice.

28. Authority of Commission to demand trade information

28. The Commission may, in writing, direct a person who-

- (a) imports, exports, trades or manufactures any goods; or
- (b) in the course of whose or its business or trade, handles or has control of any goods,

to provide the Commission, within a specified time, with any information relating to the import, export, manufacture, supply or storage of the goods in question.

29. Authority of Commission to suspend or cancel permits

29. The Commission may suspend or cancel a permit issued in terms of this Act in accordance with this Chapter and the regulations.

Part C

Customs duty applications

30. Customs duty applications

30. (1) The Commission must, upon receipt of an application in terms of section 26(1)(c) or (d)-

- (a) notify the SACU Secretariat of the application; and
- (b) ascertain whether an application dealing with a substantially similar matter is pending before the relevant SACU institution or has been decided upon by the relevant SACU institution within the previous six months from the date of that application.

(2) If the Commission determines that an application before it deals with a substantially similar matter contemplated in subsection (1)(b), the Commission may-

- (a) advise the applicant in writing that the application will not be considered and inform the SACU Secretariat accordingly; or
- (b) investigate and evaluate the application and recommend to the Tariff Board that the application be approved or rejected.

(3) If the Commission determines that an application before it does not deal with a substantially similar matter contemplated in subsection (1)(b), the Commission must evaluate the merits of the application and recommend to the Tariff Board that the application be approved or rejected.

(4) The Commission must, when evaluating a matter in terms of this section, apply any relevant rules of analysis established by the SACU Council through the formulation of policy mandates, procedures or guidelines contemplated in Article 8(2).

(5) (a) The Commission may, when considering an application referred to in section 26(1)(c), request the Commissioner for the South African Revenue Service to impose a provisional payment contemplated in Chapter VI of the Customs and Excise Act.

(b) If the Commission has acted in terms of paragraph (a) it must make a final recommendation to the Tariff Board when it has completed its evaluation.

31. Requests

31. (1) The Commission may receive requests from SACU to-

- (a) evaluate a recommendation made to the Tariff Board by another Member State; or
- (b) investigate and compile information available within the Republic concerning such a recommendation.

(2) The Commission may receive a request from the National Body of a Member State to-

- (a) evaluate an application for a customs duty amendment received by that Member State; or
- (b) investigate and compile information available within the Republic concerning such an application.

(3) The Commission must, upon receiving a request in terms of subsection (1)(a) or (2)(a), evaluate the application or recommendation, and make a recommendation to the Tariff Board concerning the matter.

(4) The Commission must, upon receiving a request in terms of subsection (1)(b) or (2)(b), conduct an investigation or compile the information requested and deliver a report concerning the matter to the Tariff Board or relevant National Body, as the case may be.

(5) Section 26, read with the changes required by the context, applies to a request received by the Commission in terms of subsection (1) or (2).

(6) The Commission may request the National Body of another Member State to-

- (a) evaluate-
 - (i) an application for customs duty amendment received by the Commission; or
 - (ii) a recommendation made to the Tariff Board by another Member State; or

- (b) investigate and compile information available within its jurisdiction concerning such an application or recommendation.

32. Consideration of alleged dumping and subsidised exports

32. (1) Despite section 1, in this section-

- (a) "export" means to bring or send goods, or to cause them to be brought or sent, into the Common Customs Area from a country or territory outside the Common Customs Area; and
- (b) "exporter" means any person who brings or sends goods, or causes them to be brought or sent, into the Common Customs Area from a country or territory outside the Common Customs Area.

(2) For the purpose of considering an application alleging the dumping or subsidised export of goods into the Common Customs Area-

- (a) "export price", subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;
- (b) "normal value", in respect of any goods, means-
 - (i) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or
 - (ii) in the absence of information on a price contemplated in subparagraph (i), either-
 - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
 - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative;
- (c) "subsidised export" means goods exported into the Common Customs Area, in respect of which the government of, or a public body within, any country-
 - (i) has provided-
 - (aa) any form of financial aid;
 - (bb) any form of assistance with its production, manufacture, transportation or export; or
 - (cc) any similar assistance; or

- (ii) has foregone any revenue that would otherwise be due to that government or public body; and
 - (d) "public body" includes a person or body that acts on behalf of the government of, or another public body within, a country.
- (3) The Commission must, in determining the margin of dumping of goods, make reasonable allowance for differences in conditions and terms of sale, differences in taxation and other differences affecting price comparability.
- (4) If the Commission, when evaluating an application concerning dumping, concludes that the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country.
- (5) The Commission must, despite the definition of "export price" set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis.
- (6) Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned-
 - (a) there is no export price as contemplated in the definition of dumping;
 - (b) there appears to be an association or compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
 - (c) the export price actually paid or payable is unreliable for any other reason.

Part D

Confidential information

33. Right of informants to claim confidentiality

33. (1) A person may, when submitting information to the Commission, identify information that the person claims to be information that-
- (a) is confidential by its nature; or
 - (b) the person otherwise wishes to be recognised as confidential.
- (2) A person making a claim in terms of subsection (1) must support that claim with-
- (a) a written statement in the prescribed form-
 - (i) explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of "information that is by nature confidential" in section 1 (2); or

- (ii) motivating, in the case of other information, why that information should be recognised as confidential; and
- (b) either-
 - (i) a written abstract of the information in a non-confidential form; or
 - (ii) a sworn statement setting out the reasons why it is impossible to comply with subparagraph (i).

34. Determination by Commission

34. (1) If a person makes a claim in terms of section 33, the Commission must-

- (a) in the case of information claimed to be confidential by nature, determine whether the information satisfies the requirements of the definition of "information that is by nature confidential" set out in section 1(2); or
- (b) in the case of other information, determine whether the information should be recognised as confidential.

(2) If, upon considering a claim in terms of subsection (1)(a), the Commission determines that the information is not, by nature, confidential-

- (a) the Commission must invite the claimant to submit a further motivation for the information to be recognised as otherwise confidential; and
- (b) if the claimant submits such a motivation within the prescribed time, the Commission must reconsider the claim in terms of subsection (1)(b).

(3) Upon making a final determination in terms of subsection (1) or (2)(b), the Commission-

- (a) must notify the claimant in writing of its determination; and
- (b) may, if it has determined that the information is not, by nature, confidential or should not be recognised as being otherwise confidential, advise the claimant that the information will not be considered in determining the merits of an application or other matter in question.

35. Proceedings in contested claims

35. (1) A claimant affected by a determination of the Commission in terms of section 34(3) may appeal against that determination to a High Court, subject to its rules, in the prescribed manner and form.

(2) A person who seeks access to information which the Commission has determined is, by nature, confidential, or should be recognised as otherwise confidential, may-

- (a) first, request that the Commission mediate between the owner of the information and that person; and

- (b) failing mediation in terms of paragraph (a), apply to a High Court for-
 - (i) an order setting aside the determination of the Commission; or
 - (ii) any appropriate order concerning access to that information.
- (3) Upon appeal in terms of subsection (1), or an application in terms of subsection (2)(b), the High Court may-
 - (a) determine whether the information-
 - (i) is, by nature, confidential; or
 - (ii) should be recognised as being otherwise confidential; and
 - (b) if it determines that it is confidential, make any appropriate order concerning access to that confidential information.

36. Disclosure of information

36. (1) The Commission must treat any information that is the subject of a claim in terms of this Part as confidential until a final determination has been made concerning such information.

(2) Once a final determination has been made concerning any information, it is confidential only to the extent that the final determination has accepted it to be confidential information.

- (3) For the purposes of this section and section 37, "final determination" means a decision by-
- (a) the High Court, that in terms of the rules of court may not be appealed, or has not been appealed within the time allowed; or
 - (b) the Supreme Court of Appeal.

37. Restricted use of information

37. (1) (a) When making any decision in terms of this Act, the Commission may take confidential information into account in making its decision.

- (b) If the Commission's reasons for the decision would reveal any confidential information, the Commission must, after publishing its decision in the matter, provide a copy of the proposed reasons to the party concerned within the prescribed time before publishing those reasons.

(2) A party may apply to a High Court, subject to its rules, within the time period contemplated in subsection (1)(b) after receiving a copy of the proposed reasons, for an appropriate order to protect the confidentiality of the relevant information.

(3) If a party applies to the High Court in terms of subsection (2), the Commission must not publish the proposed reasons until a final determination in the matter has been made.

Part E

Powers of investigative search and inspections

38 Appointment of investigating officers

38. (1) The Chief Commissioner may appoint any person in the service of the Commission, or any other suitable person, as an investigating officer.

(2) An investigating officer must be provided with a certificate of appointment signed by the Chief Commissioner stating that the person has been appointed as an investigating officer in terms of this Act.

(3) When an investigating officer performs any function in terms of this Act or any other law, the investigating officer must-

- (a) be in possession of a certificate of appointment issued in terms of subsection (2); and
- (b) show that certificate to any person who is affected by the investigation, or if no one is present on the premises, affix a copy of the certificate to the premises in a prominent and visible place and proceed with the execution of the relevant function.

39. Summons

39. (1) The Chief Commissioner may-

- (a) direct the Commission, a committee or an investigating officer to question any person under oath or affirmation; or
- (b) give directions prohibiting or restricting the publication of any evidence given to the Commission.

(2) The Chief Commissioner may, at any time during an investigation in terms of this Act, summon any person who can furnish any information on the subject of the investigation, or who has possession or control of any book, document or other object that has a bearing on that subject to-

- (a) appear before the Chief Commissioner, the Commission, a committee or a person authorised by the Chief Commissioner to be questioned; or
- (b) deliver or produce any book, document or other object referred to in the summons, to the Chief Commissioner, the Commission, a committee or a person authorised by the Chief Commissioner, at a time and place specified in the summons.

(3) The Commission or a committee may-

- (a) accept oral submissions from any person;
- (b) accept as evidence any relevant oral testimony, document or other thing, whether or not-
 - (i) it is given or proven under oath or affirmation; or

- (ii) would be admissible as evidence in court; or
 - (c) refuse to accept any oral testimony, document or other thing that is unduly repetitious.
- (4) When the Commission or a committee hears oral testimony in terms of subsection (3), the Commission or committee-
- (a) may require the witness who testified to deliver a sworn statement of the evidence given, in the prescribed manner and form; and
 - (b) must, after the witness has complied, disregard the oral testimony of that witness and consider only the written statement of evidence of the witness.

40. Witnesses

40. (1) A person questioned or giving evidence in terms of section 39, must answer every relevant question truthfully and to the best of that person's ability.

(2) The law regarding a witness' privilege in a criminal case in a court of law applies equally to a person who is giving evidence in terms of section 39.

(3) A self-incriminating answer given or statement made to a person exercising powers in terms of this Act is not admissible as evidence against the person who gave that answer or made that statement in criminal proceedings, except for perjury or an offence contemplated in section 53 or 54(2)(d).

41. Import and export control inspections

41. (1) An investigating officer may, subject to section 38(3), conduct an inspection to determine whether Part B of Chapter 4 or any notice issued in terms of section 6 are being or have been complied with, and for that purpose may at any reasonable time-

- (a) enter upon and inspect any place, premises or vehicle in or on which any goods to which section 6 applies are stored, manufactured, supplied, handled, sold, removed, transported or otherwise dealt with;
- (b) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document or from any other person who may have the information;
- (c) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to-
 - (i) search for any data contained in or available to that computer system; and
 - (ii) reproduce any record from that data;
- (d) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the inspection.

- (e) direct any person who manufactures, supplies, stores, handles, sells, removes, transports or otherwise deals with any goods to which section 6 applies, or who has done any of those things with regard to such goods, or the servant or agent of such a person to-
 - (i) produce to the investigating officer any such goods or any book or other document in connection with such goods in the custody or under the control of that person; or
 - (ii) furnish the investigating officer with any information in relation to those goods that the investigating officer specifies;
 - (f) inspect any such goods, any book or document, or make extracts from or copies of any such book or document;
 - (g) seize any such goods, any book or document that may afford evidence of any offence in terms of this Act; and
 - (h) leave on such goods, book or document or the container in which they are located, any identification mark or seal.
- (2) Section 43 to 45 do not apply to an inspection in terms of this section.

42. Conduct of entry and search

42. (1) A person who enters and searches any premises must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(2) During a search only a female investigating officer or female police officer may search a female person, and only a male investigating officer or male police officer may search a male person.

(3) A person who enters and searches premises must, before questioning anyone-

- (a) advise that person of the right to legal representation; and
- (b) allow that person to exercise that right.

(4) A person who removes anything from premises being searched must-

- (a) issue a receipt for it to the owner, or person in control of, the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

(5) Any person who has custody or control of goods, books or documents referred to in section 41, must, subject to subsection (6), give the investigating officer the necessary assistance to examine those goods, books or documents, when requested to do so by the investigating officer.

(6) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains confidential information.

(7) If the owner or person in control of an article or document refuses, in terms of subsection (6), to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of a High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is confidential.

(8) Section 40(3) applies to an answer given or statement made to an investigating officer in terms of section 41.

(9) A person authorised to conduct an entry and search may be accompanied and assisted by a police officer.

(10) A police officer who is acting in terms of subsection (9), may, if entry and search is refused, overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.

(11) The police officer must, before using force in terms of subsection (10), audibly demand admission and announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

(12) The Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

43. Power to enter and search under warrant

43. (1) A judge of a High Court, regional magistrate or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there are reasonable grounds to believe that anything connected with an investigation in terms of this Act is in the possession of, or under the control of, a person who is on or in those premises.

(2) A warrant to enter and search may be issued at any time and must specifically-

- (a) identify the premises that may be entered and searched; and
- (b) authorise an investigating officer or a police officer to enter and search the premises and to do anything referred to in section 45.

(3) A warrant to enter and search is valid until the-

- (a) warrant is executed;
- (b) warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) purpose for issuing it has lapsed; or
- (d) expiry of one month after the date that it was issued.

(4) A warrant to enter and search may be executed only during the day, unless the person who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

- (5) A person executing a warrant must before commencing with the execution of the warrant-
- (a) provide identification to the owner or person in control of the premises and explain to that person the purpose of the warrant; and
 - (b) hand a copy of the warrant to that person or to the person named in it.
- (6) If no one is present on the premises, affix a copy of the warrant to the premises in a prominent and visible place.

44. Power to enter and search without warrant

44. (1) An investigating officer may, without a warrant, enter and search premises other than a private dwelling.

- (2) The investigating officer conducting the search must, before entering and searching-
- (a) believe on reasonable grounds that a warrant would be issued under section 43 if applied for, and that the delay in obtaining a warrant would defeat the object or purpose of the entry and search; and
 - (b) provide identification to the owner or person in control of the premises and explain to that person the purpose of the search; or
 - (c) get permission from that person to enter and search the premises.
- (3) An entry and search without a warrant may be carried out only during the day, unless carrying it out at night is justifiable and necessary.

45. Power to enter and search

45. (1) Section 42, read with the changes required by the context, applies to an entry and search under section 43 or 44.

- (2) A person who is acting under section 43 or 44 may-
- (a) enter upon or into those premises;
 - (b) search those premises;
 - (c) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
 - (d) examine any article or document that is on or in those premises that has a bearing on the investigation;
 - (e) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;

- (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
- (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to-
 - (i) search any data contained in or available to that computer system; and
 - (ii) reproduce any record from that data; and
- (h) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation.

(3) Section 40(3) applies to an answer given or statement made to an investigating officer in terms of this section.

Part F

Reviews and appeals

46. Reviews

46. (1) A person affected by a determination, recommendation or decision of the Commission in terms of section 16 or 17 or this Chapter, may apply to a High Court for a review of that determination, recommendation or decision.

(2) Subject to item 2(3) of Schedule 2, a person affected by a decision of the SACU Council, arising in whole or in part out of a recommendation of the Commission in terms of this Act, may apply for a review of that decision only to an institution designated by or in terms of the SACU Agreement, and in accordance with the rules of that institution.

(3) The High Court may, in a review in terms of subsection (1) or item 2(3) of Schedule 2, make an order for the payment of costs against any party, or against any person who represented a party in the proceedings, according to the requirements of the law and fairness.

47. Appeals

47. (1) An appeal against a decision of the High Court in respect of a matter within its jurisdiction in terms of section 46 lies to the Supreme Court of Appeal, or the Constitutional Court, only with leave to appeal, and subject to their respective rules.

(2) The right to appeal in terms of subsection (1) is-

- (a) subject to any law that specifically grants, limits or excludes any right of appeal; and
- (b) not limited by the monetary or non-monetary value of the matter in dispute.

(3) A court granting leave to appeal in terms of this section may attach any appropriate conditions, including a condition that the applicant provide security for the costs of the appeal.

(4) Section 21(1A) to (3)(e) of the Supreme Court Act, 1959 (Act No. 59 of 1959), read with the changes required by the context, applies to an application to the Supreme Court of Appeal for leave to appeal under this Act.

CHAPTER 5

ENFORCEMENT AND OFFENCES

48. Variation of order

48. The Commission may, of its own accord or on application by a person affected by a determination, recommendation or decision of the Commission, vary or rescind that determination, recommendation or decision-

- (a) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
- (b) erroneously sought in the absence of a party affected by it;
- (c) made as a result of a mistake common to all of the parties to the proceedings.

49. Standard of proof

49. In any proceedings in terms of this Act, other than criminal proceedings, the standard of proof is on a balance of probabilities.

50. Breach of confidence

50. (1) It is an offence to disclose any confidential information concerning the affairs of any person obtained-

- (a) in carrying out any function in terms of this Act; or
- (b) as a result of initiating a complaint, or participating in any proceedings in terms of this Act.

(2) Subsection (1) does not apply to information disclosed-

- (a) for the purpose of the proper administration or enforcement of this Act;
- (b) for the purpose of the administration of justice;
- (c) at the request of an investigating officer or member of the Commission entitled to receive the information; or
- (d) within the terms of appropriate order of access made in terms of section 35(2).

51. Hindering administration of Act

51. It is an offence to hinder, obstruct or unduly influence any person who is exercising a power or performing a duty delegated to conferred or imposed on, that person by this Act.

52. Failure to attend when summoned

52. It is an offence, when summoned in terms of section 39, to-

- (a) fail, without sufficient cause, to appear at the time and place specified or to remain in attendance until excused; or
- (b) attend as required, but to-
 - (i) refuse to be sworn in or to make an affirmation; or
 - (ii) fail to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

53. Failure to answer fully or truthfully

53. It is an offence, having been sworn in or having made an affirmation to-

- (a) fail to answer any question fully and to the best of one's ability; or
- (b) give false evidence, knowing or believing it to be false.

54. Other offences

54. (1) It is an offence to fail to comply with-

- (a) a notice issued in terms of section 6;
- (b) a condition stated in a permit issued in terms of Part B of Chapter 4;
- (c) a directive given in terms of section 28;
- (d) an interim or final order made in terms of this Act.

(2) It is an offence to-

- (a) improperly attempt to influence the Commission concerning any matter connected with an investigation;
- (b) anticipate any findings of the Commission concerning an investigation in a way that is calculated to influence the proceedings or findings;
- (c) do anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (d) knowingly provide false information to the Commission;
- (e) wilfully interrupt the proceedings in the place where a hearing is being conducted;
- (f) act contrary to a warrant to enter and search;
- (g) falsely represent oneself as an investigating officer.

55. Penalties

55. (1) Any person convicted of an offence in terms of this Act, is liable-

- (a) in the case of a contravention of section 54(1), to a fine not exceeding R500 000,00 or to imprisonment for a period not exceeding ten years, or to both such fine and imprisonment;
- (b) in case of a contravention of section 50, 53, 54(2)(c) or 54(2)(d), to a fine not exceeding R250 000,00 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment; or
- (c) in any other case, to a fine not exceeding R20 000,00 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(2) A court convicting a person of importing or exporting, or attempting to import or export, goods in contravention of a notice issued in terms of section 6, or failing to comply with a condition of a permit issued in terms of section 27, may declare the goods in question, or the right of that person to those goods, forfeited to the State.

(3) A declaration in terms of subsection (2) does not affect the rights to the goods in question of any person other than the convicted person, unless it is proved that the other person should reasonably have known that the goods were being dealt with in contravention of the notice or condition in question.

(4) Section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), read with the changes required by the context, applies to a forfeiture under subsection (2).

56. Magistrates' Court jurisdiction to impose penalties

56. Despite anything to the contrary contained in any other law, a Magistrates' court has jurisdiction to impose any penalty provided for in this Act.

57. Serving of documents

57. Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on or given to a person, is regarded as properly served or given when it is-

- (a) delivered to that person in the prescribed manner; or
- (b) sent by registered post to the last known address of that person.

58. Proof of facts

58. In any criminal proceedings in terms of this Act, upon proof that a statement, entry, record or information that appears in or on a book, document, plan, drawing or computer storage medium, is false-

- (a) the person who was in possession of, or in control of, such book, document, plan, drawing or computer storage medium; and

- (b) any person who knew or ought to have known about the entry, record or information, must in the absence of evidence to the contrary which raises a reasonable doubt, be presumed to be responsible for the false statement, entry, record or information.

CHAPTER 6

GENERAL PROVISIONS

59. Regulations

59. The Minister may make regulations-

- (a) regarding the proceedings and functions of the Commission, after consulting the Commission;
- (b) to give effect to the objects of this Act; and
- (c) on any matter that may or must be prescribed in terms of this Act.

60. Guidelines

60. (1) The Commission may issue guidelines on the Commission's policy approach to any matter within its jurisdiction.

(2) A guideline issued in terms of subsection (1)-

- (a) must be published in the Gazette; but
- (b) is not binding on the Commission, any SACU institution or any Court.

61. Official seal

61. The President may, by proclamation in the Gazette, prescribe an official seal for the Commission.

62. Act binds State

62. This Act binds the State.

63. Transitional arrangements and repeal of laws

63. (1) Schedule 2 regulates transitional arrangements in respect of international trade administration within the Republic.

(2) The laws specified in Schedule 3 are, subject to subsection (3) and Schedule 2, repealed to the extent indicated in the third column of that Schedule.

(3) Despite subsection (2), a regulation promulgated in terms of the Import and Export Control Act, 1963 (Act No. 45 of 1963), and in force immediately before this Act came into operation, must be regarded as being a regulation made in terms of this Act.

64. Short title and commencement

64. (1) This Act is called the International Trade Administration Act, 2002, and comes into operation on a date fixed by the President by proclamation in the Gazette.

(2) Sections 4, 15(3), 16(3), 19, 20, 30, 31 and 46(2) and item 2(3) of Schedule 2, may not come into operation until the SACU Agreement has become law in the Republic.

SCHEDULE 1**SACU AGREEMENT**

The Sacu Agreement is to be inserted pursuant to its final conclusion and to the relevant constitutional requirements pertaining to international agreements having been met.

SCHEDULE 2**TRANSITIONAL PROVISIONS****1. Definitions**

1. In this Schedule-

"Board" means the Board on Tariffs and Trade constituted in terms of the Board on Tariffs and Trade Act, 1986 (Act No. 107 of 1986); and

"matter pending" means any matter that had been received, but not disposed of, by the Board prior to its close of business on the day immediately before this Act came into operation.

2. Implementation of SACU Agreement

2. (1) Before the sections listed in section 64(2) come into operation, the Commission must investigate, and evaluate applications received by it in terms of section 26(1)(c) or (d) in accordance with section 32, read with the Board on Tariffs and Trade Act, as if that Act had not been repealed.

(2) For the purposes of this item-

(a) section 26(1)(c) must be regarded as if it read:

"(c) the amendment of customs duties, including an amendment in respect of any of the following matters arising in respect of goods imported into the Republic

(i) anti-dumping duties;

(ii) countervailing duties; or

(iii) safeguard duties; or";

(b) section 26(2)(b) must be regarded as if it read:

"(b) received in terms of subsection (1)(c) or (d), in accordance with the provisions of item 2 of Schedule 2"; and

- (c) a reference in the Board on Tariffs and Trade Act to the Board must be regarded as referring to the Commission.

(3) Until the SACU Agreement provides for a review of decisions of the SACU Council, contemplated in section 46(2), a person affected by such a decision may apply to a High Court for a review of that decision, unless that person or a related person has sought a review of the same decision in terms of the law of another Member State.

3. Composition of Commission

3. Despite section 8, a person who was, a member of the Board immediately before this Act came into operation, is, a member of the Commission, for a term that expires on the date that such appointment to the Board would have expired, had this Act not come into operation.

4. Pending applications and other Board business

4. (1) Any matter pending before the Board immediately before this Act came into operation and in respect of which the Board has not reported to the Minister in terms of section 4(1)(b) of the Board on Tariffs and Trade Act, 1986, must be proceeded with by the Commission in terms of this Act.

(2) Any matter on which the Board reported to the Minister in terms of section 4(1)(b) of the Board on Tariffs and Trade Act, 1986, before this Act came into operation must be proceeded with in terms of that Act as if it had not been repealed.

(3) Any summons issued by the Board in terms of section 12 of the Board on Tariffs and Trade Act, 1986, that is returnable after this Act comes into operation must be regarded-

- (a) as a summons to appear before the Commission on the date and at the time and place shown on the summons; and
- (b) as having been issued by the Chief Commissioner in terms of this Act.

(4) A permit issued or notice given in terms of the Import and Export Control Act, 1963, and valid immediately before this Act came into operation, must be regarded as a permit issued or notice given in terms of this Act.

5. Statutory references

5. (1) Any reference in any law to-

- (a) the "Board on Tariffs and Trade Act, 1986", must be regarded as a reference to this Act;
- (b) the "Board on Tariffs and Trade established in terms of the Board on Tariffs and Trade Act, 1986", must be regarded as a reference to the International Trade Administration Commission established in terms of this Act;
- (c) a "report and recommendation to the Minister referred to in section 4(1)(b) of the Board on Tariffs and Trade Act, 1986", depending on the context, must be regarded as a reference to either-

- (i) a "recommendation concerning a matter to the Tariff Board" in terms of section 30; or
 - (ii) the "determination" of a matter in terms of section 27(1)(a); and
 - (d) an "enquiry referred to in section 12 of the Board on Tariffs and Trade Act, 1986", must be regarded as a reference to an "investigation" in terms of this Act.
- (2) A reference to the "Director-General: Trade and Industry" in section 48(2A) of the Customs and Excise Act, must be regarded as a reference to the International Trade Administration Commission.

6. Status of Board Employees and others

6. (1) An outstanding delegation to an officer or employee of the Department of Trade and Industry in terms of section 13 of the Board on Tariffs and Trade Act, 1986, may not be continued under this Act.

(2) A person who, immediately before this Act came into operation, was designated in terms of section 14 of the Board on Tariffs and Trade Act, 1986, as an investigating officer, or was designated in terms of section 3A (2) of the Import and Export Control Act, 1963, as an inspector, is not an investigating officer in terms of this Act unless appointed in terms of section 38 of this Act.

(3) An officer or employee appointed in terms of the Public Service Act, 1994 (Proclamation No 103 of 1994), to serve the Board immediately before this Act came into operation, continues to be an officer or employee under the Public Service Act, 1994.

(4) If an officer or employee referred to in subitem (3) is appointed as an officer or employee of the Commission, the accumulated value of that person's contributions to any pension fund, together with the accumulated value of the contributions made to that fund by the person's employer, may be transferred to a pension fund established for the staff of the Commission.

SCHEDULE 3
REPEAL OF LAWS (SECTION 63(2))

No and year of Act	Short title	Extent of repeal
Act No. 107 of 1986	Board on Tariffs and Trade Act, 1986	The whole
Act No. 60 of 1992	Board on Tariffs and Trade Amendment Act, 1992	The whole
Act No. 39 of 1995	Board on Tariffs and Trade Amendment Act, 1995	The whole
Act No. 16 of 1997	Board on Tariffs and Trade Amendment Act, 1997	The whole
Act No. 45 of 1963	Import and Export Control Act, 1963	The whole
Act No. 61 of 1967	Import and Export Control Amendment Act, 1967	The whole
Act No. 8 of 1984	Import and Export Control Amendment Act, 1984	The whole
Act No. 44 of 1990	Import and Export Control Amendment Act, 1990	The whole

**CUSTOMS AND EXCISE ACT
NO. 91 OF 1964**

ACT

To provide for the levying of customs and excise duties and a surcharge; for a fuel levy, the prohibition and control of the importation, export or manufacture of certain goods; and for matters incidental thereto.

CHAPTER I

DEFINITIONS

1. Definitions

(1) In this Act, unless the context otherwise indicates, any reference to customs and excise or matters relating thereto shall be deemed to include a reference to surcharge and fuel levy or matters relating thereto, and-

'agricultural distiller' means any owner or occupier of a farm in the Republic who

- (a) is licensed to keep a still on such farm; and
- (b) is licensed to distil spirits exclusively from prescribed fresh fruit grown by him on such farm;

'Commissioner' means the Commissioner for the South African Revenue Service;

'common customs area' means the combined area of the Republic and territories with the governments of which customs union agreements have been concluded under section 51;

'container depot' means any container depot contemplated in section 6 (1)(hB);

'container operator' means any person providing international transportation of containerized goods, and approved by the Commissioner, under section 96A, for operating containers in the Republic;

'container terminal' means any container terminal contemplated in section 6 (1)(hA);

'Controller', in relation to any area or any matter, means the officer designated by the Commissioner to be the Controller of Customs and Excise in respect of that area or matter and includes an officer acting under the control or direction of any officer so designated by the Commissioner;

'crew' includes every person (except the master or pilot) employed in any capacity on board any ship or aircraft;

'customs duty' means, subject to the provisions of subsection (3), any duty leviable under Schedule 1 (except Parts 4 and 5 thereof) or 2 on goods imported into the Republic;

'degrouper depot' means any degrouper depot for air cargo contemplated in section 6(1)(hC) and licensed under the provisions of this Act; and

'degrouper operator' means the licensee of a degrouper depot;

'depot operator' means the person having charge of any container depot;

'duty' means any duty leviable under this Act and subject to-

- (a) section 47B, any air passenger tax leviable under that section; and
- (b) Chapter VA, any environmental levy leviable under that Chapter.

'entry for home consumption' includes entry under any item in Schedule 3, 4 or 6;

'environmental levy' means any duty leviable under Part 3 of Schedule No. 1 on any goods which have been manufactured in or imported into the Republic; and

'environmental levy goods' means any goods specified in Part 3 of Schedule No. 1 which have been manufactured in or imported into the Republic.;

'excisable goods' means any goods specified in Part 2 of Schedule 1 which have been manufactured in the Republic;

'excise duty' means, subject to the provisions of subsection (3), any duty leviable under Part 2 of Schedule 1 on any goods manufactured in the Republic

'excise value' means value as defined in section sixty-nine;

'exporter' includes any person who, at the time of exportation

- (a) owns any goods exported;
- (b) carries the risk of any goods exported;
- (c) represents that or acts as if he is the exporter or owner of any goods exported;
- (d) actually takes or attempts to take any goods from the Republic;
- (e) is beneficially interested in any way whatever in any goods exported;
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e), and, in relation to imported goods, includes the manufacturer, supplier or shipper of such goods or any person inside or outside the Republic representing or acting on behalf of such manufacturer, supplier or shipper;

'fuel levy' means any duty leviable under Part 5 of Schedule 1 on any goods which have been manufactured in or imported into the Republic;

'fuel levy goods' means any goods specified in Part 5 of Schedule 1 which have been manufactured in or imported into the Republic;

'goods' includes all wares, articles, merchandise, animals, currency, matter or things:

'home consumption' means consumption or use in the Republic;

'illicit goods', in relation to imported or excisable goods, surcharge goods or fuel levy goods, means any such goods in respect of which any contravention under this Act has been committed, and

includes any preparation or other product made wholly or in part from spirits or other materials which were illicit goods;

'importer' includes any person who, at the time of importation

- (a) owns any goods imported;
- (b) carries the risk of any goods imported;
- (c) represents that or acts as if he is the importer or owner of any goods imported;
- (d) actually brings any goods into the Republic;
- (e) is beneficially interested in any way whatever in any goods imported;
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

'International Trade Administration Commission' means the International Trade Administration Commission established by section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);

'land' includes off-loading from any vehicle;

'L.C.L. container' means any container containing goods consigned from one or more exporters to more than one importer;

'manufacture', when used as a noun, includes, in the discretion of the Commissioner any process-

- (a) in the manufacture or assembly of any excisable goods or fuel levy goods;
- (b) in the conversion of any goods into excisable goods or fuel levy goods;
- (c) whereby the dutiable quantity or value of any imported goods specified in Section B of Part 2 of Schedule 1, excisable goods or fuel levy goods is increased in any manner;
- (d) in the recovery of excisable goods or fuel levy goods from excisable goods or any other goods; or
- (e) in the packing or measuring off of any imported goods specified in Section B of Part 2 of Schedule 1, excisable goods or fuel levy goods, and, when used as a verb, has a corresponding meaning; and

'manufacturer' has a corresponding meaning;

'master', in relation to any ship, means any person (other than a pilot) having charge of such ship;

'Minister' means the Minister of Finance;

'Office' means the Office of the Commissioner for Customs and Excise mentioned in section 1A;

'officer' means a person employed on any duty relating to customs and excise by order or with the concurrence of the Commissioner, whether such order has been given or such concurrence has been expressed before or after the performance of the said duty;

'owner' includes any person lawfully acting on behalf of the owner;

'package' means any container, wrapping or outer cover and its contents, or any bundle or single piece in the case of unpacked goods;

'pilot', in relation to any aircraft, means any person having charge of such aircraft;

'plant' includes vessels, utensils, appliances and fittings;

'prescribed' means prescribed by this Act;

'regulation' means a regulation made by the Minister under this Act;

'rule' means a rule made by the Commissioner under this Act;

'ship' means any ship, vessel or boat (including a flying boat) of any kind whatsoever;

'South African Revenue Service' means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;

'State warehouse' means any premises provided by the State for the deposit of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods;

'still' means any apparatus for, or capable of, distilling spirits and includes any part thereof;

'still maker' means a person who manufactures or imports stills for sale and includes a person who repairs stills for reward;

'surcharge' means any duty leviable under Part 4 of Schedule 1 on any goods which have been imported into the Republic;

'surcharge goods' means any goods specified in Part 4 of Schedule 1 which have been imported into the Republic;

'this Act' includes any proclamation, government notice, regulation or rule issued or made or agreement concluded or deemed to have been concluded thereunder, or any taxation proposal contemplated in section 58 which is tabled in the House of Assembly;

'vehicle' means any aircraft, train, motor car, van, truck, cart, barrow or other conveyance of any kind whatsoever, and includes the fittings, furnishings and equipment thereof, and also pack animals and their harness and tackle;

'Wine and Spirit Board' means the board referred to in section 2 of the Liquor Products Act, 1989;

'wine grower' means a farmer who cultivates vines on land in his own occupation and who produces on such land wine from grapes grown on such vines or delivers grapes grown on such vines to a wine-growers' co-operative agricultural society for the manufacture of wine;

'worts' means any liquid substance containing saccharine matter before fermentation has commenced.

CHAPTER VI

ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD DUTIES (ss 55-57A)

55. General provisions regarding anti-dumping, countervailing and safeguard duties

(1) The goods specified in Schedule 2 shall, upon entry for home consumption, be liable, in addition to any other duty payable in terms of the provisions of this Act, to the appropriate anti-dumping, countervailing or safeguard duties provided for in respect of such goods in that Schedule at the time of such entry, if they are imported from a supplier, or originate in a territory, specified in that Schedule in respect of those goods.

(2) (a) The imposition of any anti-dumping duty in the case of dumping as defined in the International Trade Administration Act, 2002 (Act 71 of 2002), a countervailing duty in the case of subsidized export as so defined or a safeguard duty in the case of disruptive competition as so defined and the rate at which or the circumstances in which such duty is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination under the provisions of the International Trade Administration Act, 2002.

(b) Any such anti-dumping, countervailing or safeguard duty may be imposed in respect of the goods concerned in accordance with such request with effect from the date on which any provisional payment in relation to anti-dumping, countervailing or safeguard duty is imposed in respect of those goods under section 57 A.

(3) (a) Whenever any anti-dumping, countervailing or safeguard duty is imposed on any goods under the provisions of this Chapter, the owner of any such goods stored in a customs and excise warehouse shall produce the invoice and other documents relating to such goods to the Controller not later than the time of entry of all or any part of such goods for removal from such warehouse.

(b) The provisions of paragraph (a) shall not apply in the case of such goods entered for export from a customs and excise warehouse.

(4) An anti-dumping, countervailing or safeguard duty imposed under the provisions of this Chapter shall not apply to any goods entered under the provisions of any item specified in Schedule 3 or 4 unless such item is specified in Schedule 2 in respect of such goods.

(5) Notwithstanding the provisions of section 56, 56A or 57, the Commissioner may, subject to such conditions as he may impose in each case, exempt from payment of any anti-dumping, countervailing or safeguard duty, any goods which are imported in such circumstances or in such quantities that the importation of such goods does not, in his opinion, constitute regular importation of such goods for trade purposes.

56. Imposition of anti-dumping duties

(1) The Minister may from time to time by notice in the Gazette amend Schedule 2 to impose an anti-dumping duty in accordance with the provisions of section 55 (2).

(2) The Minister may, in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination, from time to time by notice in the Gazette withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any anti-dumping duty imposed under subsection (1).

(3) The provisions of section 48 (6) shall mutatis mutandis apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

56A Imposition of countervailing duties

(1) The Minister may from time to time by notice in the Gazette amend Schedule 2 to impose a countervailing duty in accordance with the provisions of section 55 (2).

(2) The Minister may, in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination, from time to time by notice in the Gazette withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any countervailing duty imposed under subsection (1).

(3) The provisions of section 48 (6) shall mutatis mutandis apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

57. Imposition of safeguard duties

(1) The Minister may from time to time by notice in the Gazette amend Schedule 2 to impose a safeguard duty in accordance with the provisions of section 55 (2).

(2) The Minister may, in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination, from time to time by notice in the Gazette withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any safeguard duty imposed under subsection (1).

(3) The provisions of section 48 (6) shall mutatis mutandis apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

57A Imposition of provisional payment

(1) Whenever the International Trade Administration Commission publishes a notice in the Gazette to the effect that it is investigating the imposition of an anti-dumping, countervailing or safeguard duty on goods imported from a supplier or originating in a territory specified in that notice, the Commissioner shall, in accordance with any request by the said Commission, by notice in the Gazette impose a provisional payment in respect of those goods for such period and for such amount as the Commission may specify in such request.

(2) The Commissioner shall, in accordance with any request by the said Commission, by further notice in the Gazette extend the period for which the provisional payment mentioned in subsection (1) is imposed or withdraw or reduce it with or without retrospective effect and to such extent as may be specified in the request.

(3) Such provisional payment shall be paid on goods subject thereto, at the time of entry for home consumption thereof, as security for any anti-dumping, countervailing or safeguard duty which may be retrospectively imposed on such goods under section 56, 56A or 57 and may be set off against the amount of the retrospective anti-dumping, countervailing or safeguard duty payable.

(4) If no anti-dumping, countervailing or safeguard duty is imposed before expiry of the period for which a provisional payment in relation to the goods concerned has been imposed, the amount of such payment shall be refunded.

(5) If the amount of any such provisional payment on the said goods-

- (a) exceeds the amount of any anti-dumping, countervailing or safeguard duty retrospectively imposed on such goods under section 56, 56A or 57, the amount of the difference shall be refunded; or
- (b) is less than the amount of the anti-dumping, countervailing or safeguard duty so imposed, the amount of the difference shall not be collected.

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

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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 SAW 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 SACU industry's ex-factory selling price decreases during the investigation period.

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

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

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

"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 others 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 will 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 SAM 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 or on behalf of the SACU industry if -

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

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 price

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 SAM 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 SAM 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 II - 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 liaise 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 SACU 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 antidumping 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 SAM 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

here 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.
