

GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 854 OF 2003

INVITATION TO COMMENT ON DRAFT ANTI-DUMPING REGULATIONS

The Board on Tariffs and Trade's draft anti-dumping regulations are herewith presented for public comment. The purpose of the regulations is to ensure transparency in anti-dumping proceedings, by creating a legal environment in which all parties are aware of the procedures to be followed. It also provides for strict deadlines for submitting information, which will assist the Board to conclude proceedings more timeously.

All interested parties are hereby invited to comment on the Board on Tariffs and Trade's draft anti-dumping regulations. Any queries regarding and all comments on the draft regulations may be directed to the Director: Trade Remedies Policy of the International Trade Administration, Adv. Gustav Brink, at fax (012) 428 7817, fax (012) 428 7736, or at gustavb@dti.pwv.gov.za.

All comments have to reach the Director: Trade Remedies Policy by no later than 16h00 on 16 May 2003.

REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF TRADE AND INDUSTRY

DRAFT REGULATIONS: ANTI-DUMPING

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

“Best information” 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 best information may include, in any order, –

(a) For normal value:

- (i) The prices of another seller or sellers in that market; or
- (ii) The information contained in the application; or
- (iii) Any other information at the Commission’s disposal.

(b) For export prices:

- (i) The information contained in the application; or
- (ii) The information contained in the import statistics as provided by the Commissioner for the South African Revenue Service; or
- (iii) Any other information at the Commission’s disposal.

“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 constructed 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 12h00 on the deadline indicated, unless expressly otherwise indicated.

“**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.

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

- (a) Exporters;
- (b) Foreign producers;
- (c) Importers;
- (d) Trade or business associations whose members are exporters, producers or importers;
- (e) The governments of the countries of origin and of export; and
- (f) Producers in SACU;

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 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 in the mind of the Commission. 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 and 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 after adjustments is higher than the export price after adjustments.

“**Margin of injury**” is the injury experienced by the SACU industry as a result of the dumping of the product under consideration.

“**Material injury**”, unless the opposite is clear from the context, includes actual material injury, a threat of material injury and 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 injury 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 for injury 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 if –

- (a) One directly or indirectly owns, holds or controls five per cent or more of the shares of the other;
- (b) One has the power to directly or indirectly nominate or appoint a director to the management of the other;
- (c) One is an officer or director of the other;
- (d) They are partners;
- (e) One is the employer of 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.

“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 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;
- (c) Be in sufficient detail to permit other interested parties a reasonable understanding of the substance of the information submitted in confidence.

2.2 The following list indicates information that will normally be regarded as confidential:

- (a) Management accounts;
- (b) Financial accounts of a private company;
- (c) Actual and individual sales prices;
- (d) Actual costs, including cost of production and importation cost;
- (e) Actual sales volumes;
- (f) Information, the release of which could have serious consequences for the person that provided such information;
- (g) Information that would be of significant competitive advantage to a competitor;
- (h) Any other information submitted to the Commission in confidence which is accepted as such by the Commission, as provided for in section 34(1)(b) of the *Main Act*;

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

2.3 All correspondence not clearly indicated to be confidential shall be treated as non-confidential.

2.4 The Commission will 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.

2.5 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 a significant change in circumstances relating to, dumping, material injury and 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 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 representative.

5. Oral hearings

5.1 Any interested party requesting an oral hearing shall submit the request for such oral hearing at least seven days prior to the original deadline for responses, as contemplated in sections 29, 35 and 42.

- 5.2 During the preliminary investigation phase SACU producers may request an oral hearing within 7 days after they have been supplied with opposing parties' responses.
- 5.3 All information presented during an oral hearing shall subsequently be reduced to writing by the Commission and may be made available to interested parties according to the Commission's policy.
- 5.4 Parties requesting an oral hearing shall provide the Commission with a detailed agenda for and a summary 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 at its discretion may limit or add to the agenda contemplated in subsection 4.

6. Adverse party meetings

- 6.1 Any interested party requesting an adverse party meeting shall submit the request for such adverse party meeting within 30 days after the original deadline for responses, as contemplated in sections 29, 35 and 42.
- 6.2 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.
- 6.3 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.
- 6.4 All information presented during an adverse party meeting shall subsequently be reduced to writing by the Commission and may be made available to interested parties in line with the Commission's policy.
- 6.5 Parties attending an adverse party meeting shall provide the Commission with a detailed agenda for and a summary of the information to be discussed at the adverse party meeting at the time of the acceptance of the invitation to attend such meeting. The Commission shall make the final agenda available in advance to all parties attending the meeting.

- 6.6 The Board may limit or add to the topics to be covered during the oral hearing and may structure the meeting as it deems efficient.
- 6.7 The Commission may limit the duration of the adverse party meeting. Any such limitation must be communicated to the all parties attending the meeting when the date for the meeting is finalised.
- 6.8 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.
- 6.9 There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.

Part C – Procedures

Sub-Part I – General

7. SACU industry

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

7.2 Where a SACU producer is –

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

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

7.3 An application shall be regarded as brought by 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 its support of the application after the investigation has been initiated, the Commission may -

- (a) Disregard the withdrawal of support and continue with its investigation as if all requirements in subsections 1, 2 and 3 have been met; or
 - (b) May terminate the investigation.
- 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 administrative, selling, general and packaging costs, provided such sales took place -
 - (i) In substantial quantities; and
 - (ii) Over an extended period of time;
 - (b) Were made to a related party; or
 - (c) Did 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.
- 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 bills of entry; and/or
 - (b) 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 constructs the normal value it may do so on any reasonable basis, including, but not limited to, -
- (a) The cost of another producer or producers in the same country;
 - (b) The information contained in the application; or
 - (c) Any other information at the Commission's disposal.
- 8.8 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.
- 8.9 The constructed normal value in subsection 8 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.
- 8.10 The selling, general and administrative expenses contemplated in subsection 8 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.
- 8.11 The reasonable profit margin that is included in the constructed normal value shall normally be determined -

- (a) With reference to the profitable sales of the product under investigation; or
- (b) With reference to the profitable sales of the narrowest range of products that can be identified; or
- (c) With reference to the average such profit realised by other sellers on profitable sales 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 profit margin on profitable sales before extraordinary items, interest, tax and any other circumstances that may affect such profit margin.

8.12 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 8, and as contemplated in accordance with subsection 13.

8.13 In cases where the Commission determines the normal value as contemplated in subsection 12(b) –

Such cost inputs shall be accorded market related cost of the different inputs, whether determined in that country or in a third or surrogate country;

8.14 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 12 and 13 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;
- (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.

10.4 In the event that the imported product is not resold, is not resold in the same condition imported, or where information on the resale price is not available, the export price may be constructed on any reasonable basis.

11. Material injury

11.1 No anti-dumping measures, whether provisional or definitive, may be imposed until the Commission has made a preliminary or final determination, as the case may be, that the SACU industry is experiencing

material injury or a threat of material injury, or is materially retarded in the establishment of an industry.

11.2 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.

11.3 In its determination of material injury the Commission shall, where information on the factors is available, 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;
- (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.

11.4 The Commission may, at its discretion, require any additional information on injury from the SACU industry at any stage during an investigation.

11.5 The Commission is not required to issue a separate finding in respect of each of the factors contemplated in subsections 2 and 3.

11.6 Each of the factors mentioned in subsections 2 and 3 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.

12. Threat of material injury

- 12.1 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.
- 12.2 In considering a threat of material injury the Commission shall, in addition to the factors indicated under section 11, 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) Whether products are entering or will be entering the SACU market at prices that will have a significant depressing or suppressing effect on SACU prices; and
 - (d) The exporter's inventories of the product investigated.

13. Material retardation of the establishment of an industry

- 13.1 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.
- 13.2 The Commission may impose a provisional payment or recommend an anti-dumping duty where the establishment of such industry is materially retarded by dumped imports.
- 13.3 If an industry as proposed in subsection 2 is not established within one year following the imposition of anti-dumping duties, the Commission may recommend that the duties lapse.

14. Causality

- 14.1 No anti-dumping measures may be imposed until the Commission has determined that dumped imports have caused material injury, threatens material injury to or materially retards the establishment of, the SACU industry.

- 14.2 In considering whether there is a causal link between the dumping and the material injury the Commission shall consider all relevant factors, including, but not limited to:
- (a) The change in the volume of dumped imports, whether absolute or relative to the production or consumption in the SACU market;
 - (b) The price undercutting experienced by the SACU industry vis-à-vis the imported products;
 - (c) The market share of the dumped imports;
 - (d) The magnitude of the margin of dumping; and
 - (e) The price of undumped imports available in the market.
- 14.3 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.
- 14.4 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 industry products
- And if
- (c) the imports from the countries are not negligible as contemplated in subsection 3; and
 - (d) the margin of dumping exceeds two per cent when expressed as a percentage of the export price.
- 14.5 The Commission shall determine whether there is a causal link between dumping and the material injury determined under section 11.1.
- 14.6 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. 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; and
- (f) The industry's export performance;

Provided that an interested party has submitted information on such factor or factors.

15. Comparison of normal value and export price

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

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

15.2 Adjustments must be requested in the exporter's or foreign producer's original response to the relevant questionnaires and must be –

- (a) Substantiated;
- (b) Verifiable;
- (c) Directly related to the sale under consideration; and
- (d) Clearly demonstrated to have affected price comparability at the time of setting prices.

15.3 The comparison between the normal value and the export price shall normally be made between sales at the same level of trade, e.g. at distributor, wholesaler or retail level.

15.4 The comparison shall normally be made at the same terms of trade, including packaging, terms of delivery and payment terms.

15.5 In cases of sales to related parties in the exporting country or the country of origin, the normal value as calculated at the first point of independent resale shall be compared to the export price.

15.6 The comparison between the normal value and the export price shall normally be made on a weighted average to weighted average basis, but may

be made on a transaction-by-transaction basis should the circumstances require such comparison.

- 15.7 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.
- 15.8 In cases where the Commission has determined the margin of dumping as contemplated in subsection 7, it shall indicate reasons for its decision in all subsequent reports.

16. Margin of dumping

- 16.1 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.
- 16.2 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.
- 16.3 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.

17. Lesser duty rule

- 17.1 The Commission shall consider applying the lesser of the margin of dumping and the margin of injury, normally expressed as the price disadvantage experienced by the SACU industry, where such lesser duty is considered sufficient to remove the injury caused by dumping.
- 17.2 The Commission shall normally apply 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 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.
- 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 information 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 may make a non-confidential verification report available to the applicant either separately or as part of the preliminary report.
- 19.3 Parties will receive 7 days to comment on the verification report.

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 relevant Commission 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 on the following:
- (a) The identity of the applicant and the SACU industry, a description of the volume and value of both the SACU production and the SACU consumption of the like product, and of the support for and opposition to the application in the SACU industry;
 - (b) A complete description of the allegedly dumped product, the product sold in the domestic market of the export country, if appropriate, the SACU product, the countries of origin or export in question, the identity, including contact details, of each known exporter, foreign producer or importer;
 - (c) Normal values, whether in respect of domestic selling price, a constructed normal value or an export price to a third country;
 - (d) Export prices;
 - (e) The margin of dumping;
 - (f) The injury experienced by the SACU industry; and
 - (g) The link between the alleged dumping and the injury experienced.

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, in the opinion of the Commission, 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 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, in

the Commission's opinion, 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 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.

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 12h00 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 reasonable grounds 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 immediately request the imposition of a provisional payment on the basis of the best information 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 payments

33.1 Provisional payments may not be imposed within less than 60 days after initiation of an investigation.

33.2 Provisional payments 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 issue a non-confidential report to all interested parties 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; and
- (i) The causality factors considered.

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 reasonable grounds 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 consider any information, other than comments on its preliminary report, for the purpose of its final 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 payments

- 36.1 Exporters submitting additional information to address any deficiencies as contemplated in section 31, and where such deficiencies were not addressed by the deadline contemplated in subsection 31.1, 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 payment to 9 months.

36.2 The Commission may extend any provisional payment 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 If the Commission considers significant changes to its preliminary finding 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 reasonable grounds 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 may be imposed as a specific value or as *ad valorem* duties and 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 voluntary 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.

39.2 The Commission will not consider or accept any undertaking offered prior to its reaching a preliminary finding of injurious dumping.

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 Any price undertaking must be offered within the time frame available to comment on the Commission's preliminary finding or, in the case of

reviews, within the timeframe available for comments on the essential facts letter.

- 39.5 If the undertaking is accepted, the investigation will nevertheless be completed if the exporter so desires or the Commission so decide. In such a case, if a negative final determination of dumping or injury is made, the undertaking shall lapse automatically.
- 39.6 If, after the acceptance of an undertaking, the Commission finds that the margin of dumping or of injury has changed, the Commission may require the exporter to adjust the undertaking offered.
- 39.7 No exporter may be forced to offer an undertaking.
- 39.8 The Commission may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data.
- 39.9 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; and

(e) 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 reasonable grounds 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.
- 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 finding

- 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 related to any party to which the anti-dumping duty was applied.
- 48.3 The Commission shall not consider a request for a new shipper review before definitive anti-dumping duties have been imposed.

49 Information required

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

49.2 In the event that the new shipper has not exported any products to SACU during the period under review, it shall provide the Commission with the details of all its export sales of the like product to other countries.

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 finding

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* at least six months prior to the lapse of such anti-dumping duty.
- 54.2 Interested parties will receive 30 days from the publication of the notice contemplated in subsection 1 to request a sunset review.
- 54.3 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.
- 54.4 If the Commission decides to initiate a sunset review, it shall publish an initiation notice in the *Government Gazette* prior to the lapse of such duties. Such notice shall contain the information as contemplated in section 41.

55 Notification

- 55.1 The government of the country concerned shall be informed of the imminent lapse of the anti-dumping duty as contemplated in section 54.1.
- 55.2 The government of the country concerned and all other known interested parties shall be notified of –
- (a) The initiation of the investigation; or
 - (b) The termination of the proceeding
- After the relevant notice has appeared in the *Government Gazette*.

56 Review procedure

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

57 Information required

- 57.1 Following publication of the notice in terms of section 54.1 the SACU industry shall indicate whether it will request a sunset review to be undertaken.
- 57.2 The SACU industry shall provide the Commission with detailed information in the required 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 (c), 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 duty 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 of the product.
- (b) Minor modifications to the product subject to anti-dumping duty, including the export of parts and components with assembly in a third country or within the common customs area of the Southern African Customs Union;
- (c) Absorption of the anti-dumping duty by either the exporter or the importer;
- (d) Country hopping, using the same or a related supplier;
- (e) Declaration under a different tariff heading, even where such different tariff heading does provide for the clearance of that product;
- (f) 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 warrants such action.

60.4 Minor modifications of the product shall be deemed to have taken place if the new 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;
 - (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.
 - (c) In cases involving tenders, the tender price is not increased by the extent of the anti-dumping duty.
- 60.8 Country hopping shall be deemed to take place if an importer, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation switches to the same supplier, or a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted, 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 final, or only of a single, investigation phase.

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

62.3 Provided an anti-circumvention complaint is lodged with the Commission 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) or (f), 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 best information 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 Interested parties may challenge preliminary decisions or the Board's procedures prior to the finalisation of an investigation only in cases where it can be demonstrated that –

- (a) The Board has acted contrary to the provisions of the *Main Act* or these regulations;
- (b) The Board's action or omission has resulted in serious prejudice to the complaining party; and
- (c) Such prejudice cannot be made undone by the Board'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.

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 for a refund shall be submitted within 12 months of the date on which the anti-dumping duties

were paid or payable, or from the date that it was indicated that payments provisionally collected will be collected definitively.

- 65.3 An application for refund shall only be considered to be 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 In cases where the exporter and the importer are not related parties, the exporter may supply any information contemplated in subsection 3 direct to the Commission.
- 65.5 The Commission shall decide, after consultation with the Commissioner for the South Africa Revenue Service, whether and to what extent the refund application should be granted.
- 65.6 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 and to what extent a refund is justified.
- 66 Refunds following interim reviews**
- 66.1 Where the Commission, following an interim review, recommends that the existing anti-dumping duty be decreased or withdrawn, the relevant importer or importers may request that anti-dumping duties be refunded in line with the Commission's findings.

Part E – Final Provisions

67 Delegation

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

68 Transitional application

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

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