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## GOVERNMENT NOTICE?

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### DEPARTMENT OF TRADE AND INDUSTRY

No. R. 397

28 April 2006

### INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

International Trade Administration Act, 2002

(Act No. 71 of 2002)

### TARIFF INVESTIGATIONS REGULATIONS

The Minister of Trade and Industry has, in terms of section 59 of the Act, made the regulations as set out in the Schedule hereto.

# **REPUBLIC OF SOUTH AFRICA**

## **THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION**

### **TARIFF INVESTIGATIONS REGULATIONS**

## TABLE OF CONTENTS

### **Part A - Definitions**

1. Definitions

### **Part B - General Provisions**

2. Scope of regulations
3. Confidentiality
4. Representation
5. Oral presentations
6. Submission of applications
7. Computation of periods of time

### **Part C - Procedures**

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

8. Verifications
9. Investigating officials
10. Gathering of information by the Commission

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

11. Applications
12. Acknowledgement of receipt
13. Deficient applications

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

14. Initiation
15. Preliminary Commission evaluation
16. Publication notice

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

17. Comments on publication notice
18. Final Commission evaluation

### **Part D - Final Provisions**

19. Re-submission of applications
20. Delegation
21. Transitional application

## REGULATIONS

### Part A – Definitions

#### 1. Definitions

“**applicant**” means a party submitting an application as provided for in section 6 for purposes of initiating an investigation under section 2.

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

“**correspondence**” means any written communication by a party submitted by hand delivery, mail, facsimile or electronically to the Commission for purposes of an investigation under section 2.

“**customs duty**” means ordinary customs duties as contained in Part 1 of Schedule No. 1 of the Customs and Excise Act, 1964 (Act. No. 91 of 1964).

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

“**good cause**” for an extension of the submission of information does not include merely citing insufficient time to complete such submission.

“**interested parties**” means parties that have a direct interest in an investigation and may include the applicant, producers in SACU, exporters, importers, or trade or business associations whose members are SACU producers, exporters or importers. This does not preclude the Commission from accepting other parties as interested parties at the behest of the Commission.

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

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

“**SACU**” means the Southern African Customs Union established by Article 3 of the SACU Agreement.

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

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

## **Part B – General Provisions**

### **2. Scope of regulations**

These regulations apply exclusively to investigations with regard to the reduction or increase in the rate of a customs duty and the creation or removal of rebate or drawback provisions with regard to a customs duty.

### **3. Confidentiality**

3.1 Parties providing confidential information in any correspondence shall at the same time submit non-confidential summaries thereof. These summaries shall –

- (a) indicate in each instance where confidential information has been omitted;
- (b) indicate, in each instance where confidential information has been omitted, 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.

3.2 Where information does not permit summarisation, reasons should be provided why the information cannot be summarised.

3.3 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.

- 3.4 All correspondence not clearly indicated to be confidential shall be treated as non-confidential.
- 3.5 The Commission shall disregard any information indicated to be confidential that is not accompanied by a proper non-confidential version if this deficiency has not been addressed in accordance with the provisions of this section.
- 3.6 The Commission shall disregard any information indicated to be confidential that is not accepted as confidential by the Commission under section 34(1) of the *Main Act*.

#### **4. Representation**

- 4.1 Should any party wish to be represented by an outside party in an investigation, the 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 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 a party has appointed a representative all communication between the Commission and that party will take place through the appointed representative.

#### **5. Oral presentations**

- 5.1 Interested parties may request an oral presentation during the investigation, provided the parties indicate reasons for not relying on written submissions only and substantially similar information has not already been submitted to the Commission in the investigation. The

- Commission may also refuse an oral presentation if granting such presentation would unduly delay the finalisation of an investigation.
- 5.2 No request for an oral presentation will be considered more than 4 weeks after the date on which the Commission's Publication Notice is published in the *Government Gazette*.
- 5.3 All information presented during an oral presentation shall be reduced to writing and a non-confidential version will be placed on the public file.
- 5.4 Interested parties requesting an oral presentation 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 presentation at the time of the request.
- 5.5 The Commission may limit the duration of the oral presentation. Any such limitation will be communicated to the party requesting the presentation at the same time that the Commission indicates the date for such presentation.
- 5.6 The Commission may limit or add to the agenda contemplated in subsection 4.

## **6. Submission of applications**

- 6.1 Applications must be submitted in writing and in the manner and form determined by the Commission.
- 6.2 Applications referred to in subsection 1 must be submitted by mail or by hand delivery. If submission is made by mail, the application must be addressed to the Chief Commissioner, International Trade Administration Commission of South Africa, Private Bag X753, Pretoria 0001. If submission is made by hand delivery, the application must be delivered to the Chief Commissioner at the following address: DTI Campus (building E, first floor reception), 77 Meintjies Street, Sunnyside, Pretoria.
- 6.3 If an applicant submits an application by facsimile or electronically, it must also provide the Commission with a hard copy of the application in the manner provided for in subsection 2 within 2 weeks after the transmission of the facsimile or electronic version of the application.

**7. Computation of periods of time**

- 7.1 Computation of any period of time provided for in these regulations commences with the first day following the act or event initiating such period of time. The last day of the period of time is included in the computation unless such day is a Saturday, Sunday or public holiday, or such other day when the Commission is closed for business, in which case the deadline is the next business day.
- 7.2 A party shall be deemed to have received a written communication from the Commission –
- (a) in the case of transmission by facsimile or electronically, on the day the written communication is transmitted by the Commission;
  - (b) in the case of same-day, overnight or registered mail, on the day such written communication is delivered to a party; or
  - (c) in the case of regular mail, 5 working days after the written communication is placed in the post by the Commission.

**Part C – Procedures**

**Sub-Part I – General**

**8. Verifications**

- 8.1 The Commission may satisfy itself as to the accuracy of the information supplied to it by any party by conducting verifications.
- 8.2 The Commission may conduct verifications at such time and place as it may deem necessary.
- 8.3 In the event that the party who provided the information to be verified 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.
- 8.4 Where a party –
- (a) fails to supply relevant substantiating evidence required by investigating officers during a verification;
  - (b) fails to explain any calculation 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 other information received from such party that was properly submitted and verified.

- 8.5 The Commission shall inform the party concerned of the dates of the intended verification visit and shall conduct the verification on those dates unless such party objects to the verification.
- 8.6 Where a party objects to the Commission's verification, the Commission may make a decision based on available information, and may exclude any information that was the subject of the verification.

#### **9. Investigating officials**

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

#### **10. Gathering of information by the Commission**

- 10.1 The Commission may, of its own accord, gather information during any stage of an investigation.

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

#### **11. Applications**

- 11.1 Applicants must provide the Commission with all information requested in the relevant application form.

#### **12. Acknowledgement of receipt**

- 12.1 Upon receipt of an application, the Commission will provide applicants with written acknowledgement of receipt by mail or facsimile.

- 12.2 The letter of acknowledgement will contain the investigating official's name and contact details to whose attention all communications must be addressed as provided for in section 9.1.

**13. Deficient applications**

- 13.1 In the case of a deficient application, the Commission shall inform an applicant in writing, by mail, facsimile or electronically that the application is deficient.
- 13.2 If the Commission determines the application to be deficient, the application may not be processed. An application may be regarded as deficient if one or more of the following is applicable:
- (a) The application is not in the manner and form determined by the Commission;
  - (b) All information requested in the application is not submitted;
  - (c) The application contains conflicting information; or
  - (d) The application contains incorrect information.
- 13.3 An applicant who submitted a deficient application must provide the Commission with a corrected application within 2 weeks of receipt of the written communication provided for in subsection 1.
- 13.4 If an applicant fails to provide the Commission with a corrected application within the time period provided for in subsection 3, the Commission may withdraw the application. The Commission shall inform the applicant in writing if the application is withdrawn.

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

**14. Initiation**

- 14.1 Except as provided for in subsection 2, an investigation shall only be initiated upon the Commission's acceptance of an application by or on behalf of an applicant.
- 14.2 The Commission may self-initiate an investigation.

### **15. Preliminary Commission evaluation**

- 15.1 The Commission will evaluate whether to accept or reject an application.
- 15.2 If the Commission accepts an application, it may direct publication of the application in the *Government Gazette*.
- 15.3 If the Commission rejects an application, the applicant shall be informed in writing of the decision and the reasons therefore.

### **16. Publication notice**

- 16.1 If the Commission accepts an application, a Publication Notice may be published in the *Government Gazette* and may be posted on the Commission's official website at <http://www.itac.org.za>.
- 16.2 The Publication Notice shall contain at least the following information:
  - (a) the name of the applicant;
  - (b) the type of application;
  - (c) a summary of the stated reasons for the application;
  - (d) the name and contact details of the investigating official; and
  - (e) the reference number of the application.
- 16.3 The Commission shall inform the SACU Secretariat of its decision to initiate an investigation. The Commission may also inform industry associations and role players within the affected industry of the initiation decision.

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

### **17. Comments on publication notice**

- 17.1 Unless a different time period is specified in the Publication Notice, all parties shall receive 4 weeks from the date the Publication Notice is published in the *Government Gazette* to comment in writing on the notice.
- 17.2 Comments must be in writing and may be submitted by mail, facsimile or electronically.
- 17.3 The Commission may grant up to a 2-week extension of the comment period provided for in subsection 1 on good cause shown.

- 17.4 Any extension granted in terms of subsection 3 will apply only to the party to which such extension was granted, and will not apply to other parties.
- 17.5 Any request for an extension must be submitted in writing 7 days prior to the deadline provided for in subsection 1, and must contain a proper motivation for the request.
- 17.6 The Commission may request additional information from any party submitting comments pursuant to subsection 1.

**18. Final Commission evaluation**

- 18.1 The Commission will evaluate the merits of an application and shall forward a recommendation, which includes a report setting forth the results of its evaluation, to the Minister, unless the provisions of section 64(2) of the Main Act are in operation, in which case such submission shall be forwarded to the Tariff Board.
- 18.2 Applicants will be informed in writing of the final approval or rejection of their applications and the reasons therefore.

**Part D – Final Provisions**

**19. Re-submission of applications**

- 19.1 The Commission will not accept for evaluation under section 15 an application that deals with a substantially similar matter to that of an application submitted to the Commission earlier in time until the expiry of 12 months after the date on which final approval or rejection of the application submitted earlier in time was given pursuant to section 18.

**20. Delegation**

Other than the decision-making powers concerning the evaluation whether to accept or reject an application as provided for in section 15 and the evaluation of the merits of an application as provided for in section 18, the Commission may delegate and the Commission staff

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

**21. Transitional application**

These regulations shall apply to all investigations provided for in section 2 initiated after the promulgation of the regulations.

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