

Draft
B.N.
31.10.23
13.12.23
22.02.24

Statutory Instrument No. of 2024

BOTSWANA TRADE COMMISSION ACT
(Cap. 42:14)

BOTSWANA TRADE COMMISSION (ANTI-DUMPING (INVESTIGATION))
REGULATIONS, 2024
(Published on , 2024)

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SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Trade and Industry by section 37 of the Botswana Trade Commission Act, the following Regulations are hereby made –

PART I – *Preliminary*

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|-----------------------|--|
| <i>Citation</i> | 1. These Regulations may be cited as the Botswana Trade Commission (Anti-Dumping (Investigation)) Regulations, 2024. |
| <i>Interpretation</i> | 2. In these Regulations, unless the context otherwise requires – <ul style="list-style-type: none"> “anti-circumvention review” means a review undertaken in a case where it is alleged that an anti-dumping duty is being circumvented; “applicant” means an individual SACU producer who submits an application on behalf of the SACU industry; “deadline” means the final date as communicated by the Commission, for submissions, responses, comments and requests as envisaged under these Regulations; “<i>de minimis</i>” means a margin of less than 2 per cent expressed as a percentage of the export price, or less than 3 per cent expressed as a percentage of the total volume of imports in a dumping investigation; “dumping margin” means the difference between an export price and a normal value; |

“facts available” means information that is available to the Commission at the time of making a determination, whether preliminary or final, and in cases of non-cooperation by an exporter, facts available may include, –

(a) for normal value –

- (i) the price of another seller in that market,
- (ii) the information contained in the application, or
- (iii) any other information at the Commission’s disposal; or

(b) for export prices –

- (i) the information contained in the application,
- (ii) the information contained in the national import statistics, and
- (iii) any other information at the disposal of the Commission:

Provided that the Commission has, where practicable, checked the information from any other independent source at the disposal of the Commission;

“foreign producer” means a producer outside SACU;

“good cause” for an extension of the submission of information does not include merely citing insufficient time to complete a response to the notice of the Commission;

“interested party” includes –

- (a) a producer in SACU;
- (b) an exporter;
- (c) a foreign producer;
- (d) an importer;

- (e) a trade or business association whose members are –
 - (i) SACU producers, exporters or importers, or
 - (ii) foreign producers, exporters or importers; or
- (f) the Government of a country of origin and of export,

of a product under investigation or a like product, and this does not preclude the Commission from accepting any other party as an interested party at the behest of the Commission in an anti-dumping investigation;

“interim review” means an investigation to determine whether an existing anti-dumping duty should be varied or revoked due to a change of circumstances;

“investigation” means an anti-dumping investigation;

“investigation period for dumping” means a period for which it is assessed whether dumping took place and the period is 12 months or more, but not less than six months;

“like product” means –

- (a) a product which is identical, or 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;

“margin of dumping” means the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes;

“material injury” means the economic effects of the dumped imports on the SACU industry determined by either price depression or price suppression, or

an injury that has been caused to a domestic industry and is not negligible;

“material retardation” means a standard of determining the injury to the establishment of a domestic industry as opposed to actual injury or threat of material injury;

“negligible” means the volume of dumped imports of an investigated product from a particular country which is found to account for less than 3 per cent of total imports of the investigated and like product in the SACU market, unless an import of the investigated product from a country under investigation which individually accounts for less than 3 per cent of the total imports of the investigated and like product in SACU market collectively account for more than 7 per cent of imports of the investigated and like product in the SACU market;

“new shipper review” means a review undertaken to determine an individual margin of dumping for a new exporter or producer that did not export, and is not related or affiliated with an exporter or producer that exported to SACU during the original investigation period;

“price depression” means where the SACU industry’s ex-factory selling price decreases during an investigation period;

“price disadvantage” means the extent to which a price of an 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” means where the cost-to-price-ratio of the SACU industry increases, or where the SACU industry sells at a loss during an investigation period or part of the investigation period;

“price undercutting” means the extent to which the price of an imported product is lower than the price of a like product produced by the SACU industry, as measured at the appropriate point of comparison;

“price undertaking” means a pledge, guarantee or commitment by an exporter to increase the export

price of the subject product or to cease any export to the SACU at a dumped price;

“questionnaire” means a set of questions crafted for the purpose of extracting information relevant to an investigation;

“related party” means a party deemed to be related to another party for purposes of an anti-dumping investigation, and sales may be considered not to be at arm’s length where –

- (a) one party directly or indirectly owns, controls or holds five per cent or more of the equity shares of the other party;
- (b) one party has the power to directly or indirectly nominate or appoint a director to the management of the other party;
- (c) one party is an officer or director of the other party’s business;
- (d) both parties are legally recognised partners in business;
- (e) one party is employed by the other party;
- (f) both parties are both directly or indirectly controlled by a third person;
- (g) both parties together directly or indirectly control a third person;
- (h) both parties appear to be related by virtue of the parties conduct;
- (i) both parties are blood relatives or are related by marriage, common law partnership or adoption; or
- (j) the parties relationship is otherwise of such a nature that trade between the parties cannot be regarded to be at arm’s length;

“SACU industry” means the domestic producers in the SACU who produce like products or those producers whose collective output of the products constitutes a major proportion of the total domestic production of those products;

“single investigation phase” means a preliminary assessment undertaken by the Commission which is followed by a recommendation to the SACU Tariff Board without following the investigation process under Part III of these Regulations;

“subject product” means a product under consideration or investigation in the application for investigation;

“sunset review” means an investigation to determine whether there is a likelihood that the removal of the existing anti-dumping duty would lead to a continuation or reoccurrence of injurious dumping;

“third country” means any country outside SACU that is neither the export nor the foreign producer’s country; and

“unsuppressed selling price” means the price at which the SACU industry would have been able to sell a like product in question in the absence of dumping, and can be determined with reference to –

- (a) an expected or required return of the SACU industry for a like or similar product;
- (b) a profit margin of the industry for a like product before the entry of a dumped import;
- (c) the price obtained for a like product by the industry directly before the entry of a dumped import; or
- (d) any other reasonable basis.

Application 3. These Regulations shall apply to an anti-dumping investigation.

PART II – *Application for Investigation*

Application for investigation 4. (1) The SACU industry or a person acting on behalf of the SACU industry shall, in writing, apply to the Commission for an investigation.

(2) An application referred to under subregulation (1) shall be as set out in the Schedule and accompanied by a fee of P500.

(3) An applicant shall attach to an application, a non-confidential summary with sufficient detail so as to permit a reasonable understanding of the substance of the information submitted in confidence.

(4) An application shall be regarded as brought by or on behalf of the SACU industry where –

- (a) at least 25 per cent of the SACU producers by domestic production volume supports 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.

(5) An application shall include evidence of –

- (a) dumping;
- (b) injury; and
- (c) a causal link between dumping and the material injury under regulation 36(1).

Evidence and information required in application for investigation

5. An application for an investigation shall contain –

- (a) the name, address and telephone number of the applicant;
- (b) the identity of the SACU industry by or on behalf of which the application is being made, including the names, addresses and telephone numbers of all other known producers in the SACU industry;
- (c) the volume and value of the domestic like product produced by the applicant and by each domestic producer identified;
- (d) a complete description of the allegedly dumped product, including the technical characteristics, uses of the product and the product's current tariff classification number;
- (e) the country in which the allegedly dumped product is manufactured or produced and, where the product is imported from a country other than the country of manufacture or production, the intermediate country from which the product is imported;
- (f) the name and address of each person the applicant believes sells the allegedly dumped product, and the proportion of total exports to SACU the person accounted for during the most recent 12 months period;
- (g) the evidence with regard to the existence, amount and nature of the dumping; and
- (h) the evidence that the alleged injury to a domestic industry is caused by dumped imports.

*Acknowledgment
of receipt of
application for
investigation*

6.(1) The Commission shall within five days of receiving an application under regulation 4, acknowledge in writing, receipt of such application.

(2) The Commission shall by way of acknowledgement letter communicate to the applicant the name and contact details of the assigned lead investigating officer.

*Compliance
assessment of
application for
investigation*

7.(1) Upon receipt of an application for an investigation, the Commission shall assess the application and may decide that such application is deficient where –

(a) the application is not in the manner and format set out by the Commission;

(b) the required information under regulation 5 has not been provided in full; and

(c) the application contains confidential information, and the applicant has failed to provide a non-confidential version in accordance with regulation 9.

(2) The Commission shall in the case of a deficient application, inform an applicant in writing to rectify the deficiency by providing more information within the time provided by the Commission.

(3) The applicant shall submit the corrected application in accordance with regulations 4(3) and 5.

(4) The applicant shall provide the information required under regulation 5 by the Commission within 14 days of request, and in the event the applicant fails to provide the requested information within the set time, the Commission shall exercise its discretion to regard the application as materially deficient and reject the application.

*Normal value
standard for
compliance
assessment of
application for
investigation*

8. (1) An applicant who applies for an investigation shall submit such information as is reasonably available on the price for a like product sold in the country of origin or of export.

(2) For the purpose of subregulation (1), the Commission shall consider an invoice indicating the price, quote for domestic sales of a like product, price lists, international publications or any other reasonable proof of such domestic price.

(3) Where the price under subregulation (1) is not available at the same level of trade as for export purposes, the applicant shall in the application indicate reasonable adjustments to allow the Commission to compare the submitted normal value and the submitted export price.

(4) Where the domestic selling price under subregulation (1) is not reasonably available to an applicant, the applicant shall state such applicant's effort to obtain such price, and where the applicant is unsuccessful after having undertaken reasonable efforts to obtain a domestic selling price, 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.

(5) Where the applicant supplies a constructed value in terms of subregulation (4)(a), such constructed value shall be more detailed where possible and shall separately indicate –

(a) direct costs;

(b) indirect costs;

(c) selling, general and administrative costs; and

(d) profit.

(6) An applicant –

(a) shall substantiate direct and indirect costs with any relevant publication or other information; and

(b) may base the selling, general and administrative expenses, and profit on reasonable assumptions.

(7) An applicant may supply an export price of any country under consideration as contained in the export statistics of that country, or any other reasonable proof of the export price from that country to another country, to substantiate a normal value in terms of subregulation (4)(b).

Confidentiality

9. (1) An applicant or any interested party who provides confidential information in any correspondence shall furnish a non-confidential summary of the information, and the summary shall indicate in each instance the reasons for confidentiality.

(2) The non-confidential information referred to in subregulation (1) shall be sufficient in detail to permit a reasonable understanding of the substance of the information submitted in confidence.

(3) The Commission shall keep confidential information which –

(a) by nature is confidential;

- (b) if disclosed could have a significant adverse effect upon the owner of or a person supplying the information; and
- (c) was provided on a confidential basis by a party to an investigation.

(4) For the purposes of these Regulations, the following types of information shall be deemed to be confidential by nature –

- (a) information concerning the financial condition of a company which is not publicly available including –
 - (i) management accounts,
 - (ii) financial accounts of a private company,
 - (iii) actual and individual sales prices,
 - (iv) actual costs, including costs of production and importation,
 - (v) actual sales volume, and
 - (vi) information, the release of which may have significant adverse effects on the owner of, or the person who provided the information;
- (b) information concerning the costs, identification of customers, sales, inventory, shipment, or amount or source of any income, profit, loss or expenditure related to the owner of or the person that provided the information; and
- (c) information that would be of significant competitive advantage to a competitor of the owner of the information.

(5) Where the Commission decides that a request for confidentiality is not warranted, the Commission shall inform the party submitting the information that the request is not warranted.

(6) The Commission shall give its decision under subregulation (5) in writing and state reasons for such a decision.

(7) The Commission may disregard any information indicated to be confidential that is not accompanied by a non-confidential summary as required under subregulation (1).

(8) A party who is not satisfied with the decision of the Commission to disregard any information indicated to be confidential, may appeal to the Minister within 14 days of receipt of the decision by the Commission.

(9) The Commission may not disregard any information indicated to be confidential until the Minister determines the application made under subregulation (8) or until the 14 days have elapsed with no application being made to the Minister.

Evaluation of application for investigation

10.(1) The Chief Executive Officer shall evaluate an application for an investigation and where the Chief Executive Officer rejects the application, the Chief Executive Officer shall notify the applicant of the reasons why such application was rejected.

(2) The Chief Executive Officer shall notify the applicant of the reasons for the rejection within seven days of the Chief Executive Officer's determination.

(3) Where the Chief Executive Officer approves the application, the Chief Executive Officer shall submit a preliminary recommendation to initiate an investigation to the Board.

(4) Where the Board, using the information reasonably available determines that –

(a) there is insufficient evidence of dumping, injury, or causal link;

(b) the volume of imports of the allegedly dumped product from a country into SACU is negligible; or

(c) the dumping margin is *de minimis*,

the Board shall not authorise the Chief Executive Officer to carry out the investigation.

Notification of receipt of application for investigation

11. The Commission shall, before the initiation of an investigation, and after a verification of the SACU industry's injury information, notify a representative of a country of origin and of export that the Commission has received a properly documented application for an investigation.

Notification after Board approval to initiate investigation

12.(1) Where the Board approves a recommendation to initiate an investigation, the Commission shall –

(a) inform any known interested party of the initiation of the investigation; and

(b) supply such party with all relevant documentation inclusive of the non-confidential version of the application, unless the number of interested parties makes it impracticable to supply the parties with the relevant documentation.

(2) The Board shall cause a public notice initiating the investigation to be published in the *Gazette*, in order to allow an interested party to make comments on the application within 30 days.

(3) The notice referred to in subregulation (2) shall include –

- (a) the name, address and telephone number of the applicant;
- (b) the nature of the application and the reference number of the application;
- (c) the name and contact details of the designated lead investigating officer;
- (d) the name of the country of export and the country of origin of the investigated product;
- (e) a description of the investigated product, including –
 - (i) the technical characteristics and uses of the product, and
 - (ii) the investigated product's current tariff classification number;
- (f) a description of the alleged dumping practice to be investigated;
- (g) a summary of the factors on which the allegations of injury and causal link are based;
- (h) the address where information and comments shall be submitted;
- (i) the date of initiation of the investigation;
- (j) the proposed schedule for the investigation; and
- (k) the time for publication and due date for the comments.

(4) The Commission shall inform the SACU Secretariat of the Board's decision to initiate an investigation.

*Response to
initiation notice
by interested
party*

13.(1) The Commission shall issue a questionnaire in a format to be determined by the Commission, to an interested party so that the interested party may note its response to the public notice referred to under regulation 12(2).

(2) An interested party shall be deemed to have received the questionnaire seven days after the dispatch of the questionnaire by the Commission.

- (3) The service of the questionnaire shall be done electronically, by mail or through hand delivery.
- (4) An interested party shall within 30 days after receipt of the questionnaire, submit a response to the Commission.
- (5) The deadline for submission by a party not directly informed of the investigation by the Commission shall be 40 days from the date of the initiation of such investigation by public notice in the *Gazette*.
- (6) A response by an interested party shall be in writing and submitted in a format to be determined by the Commission.
- (7) A response that is not accompanied by a non-confidential version or a response not otherwise clearly indicated as confidential, may be treated as non-confidential.
- (8) Failure by a party to comply with this provision may result in the submission being regarded as deficient.

Deficient response to notice by interested party

14.(1) The Commission shall inform an interested, in writing, to rectify any identified deficiency within seven days from the date the interested party is informed of such deficiency.

(2) The Commission shall not consider any submission which is deficient, after the deadline under subregulation (1) for the purpose of the Commission's preliminary finding to the Board.

Extension for submission of response

15.(1) Where an interested party shows good cause why an extension for submission of a response should be granted, the Commission may grant an interested party the extension.

(2) Notwithstanding subregulation (1), the Commission shall not grant an extension for the submission where there was ignorance of an ongoing investigation by the interested party.

(3) An extension granted under subregulation (1) shall apply only to a party to which such an extension was granted and not to any other interested party.

PART III – Investigation Process

Investigation

16.(1) The Commission shall, upon acceptance of a written application under regulation 4, initiate an investigation.

(2) Notwithstanding subregulation (1), the Commission may initiate an investigation without having received a written application for the initiation of such investigation.

(3) The Commission shall initiate an investigation under subregulation (2), where the Commission has sufficient evidence of dumping, injury or a causal link to justify the initiation of such investigation.

(4) At any stage of the investigation, the Commission may request or gather additional information.

(5) Where the Commission during its investigation finds out that the subject product is imported under a tariff subheading not initially indicated to be in the scope of the investigation, the Commission may include the imports of such subject product in the Commission's injury analysis.

Duration of investigation

17. The Commission shall conclude an investigation within one year after initiation of such investigation, and the investigation may be extended for a period of not more than six months.

Representation

18.(1) Where an interested party wishes to be represented by an outside party in an investigation, the interested party shall provide the Commission with a letter of appointment of the interested party's representative.

(2) The letter of appointment under subregulation (1) shall –

(a) detail the identity of the representative, the scope and duration of the representation; and

(b) be signed by the highest level of authority or an authorised representative with proof of authorisation.

(3) Where any interested party wishes to terminate a representation under subregulation (1), such party shall provide the Commission with a letter to this effect and the letter shall comply with the requirements under subregulation (2)(b).

(4) Where an interested party has appointed a representative, communication between the Commission and the interested party shall be through the appointed representative.

(5) Notwithstanding subregulation (4), the Commission may communicate directly with an interested party.

Oral hearing

19.(1) The Commission shall provide a fair opportunity for any interested party concerned to defend the party's interests during the period of investigation and the Commission may, upon request, hold a hearing for the interested party to present the interested party's views and arguments.

(2) Any interested party may present oral submissions during the hearing.

(3) The interested party shall within seven days of the oral hearing, reduce the information presented during the oral hearing to writing and a non-confidential version of the information shall be placed on the public file.

(4) Where the interested party fails to submit the written oral submissions in accordance with subregulation (3), the Commission shall not consider the oral submissions under subregulation (2).

(5) Where a party requests for an oral hearing, such party shall indicate the reasons for not relying on written submissions only.

(6) The Commission shall have a discretion to reject a request for an oral hearing where the Commission determines that –

- (a) substantially similar information has already been submitted in written form to the Commission;
- (b) written submission, in the Commission's view, adequately sets out the matter intended for an oral submission; or
- (c) the submission would unduly delay finalisation of the investigation.

(7) An interested party requesting an oral hearing shall at the time of request provide the Commission with an agenda for the oral hearing.

*Preliminary
report*

20. (1) Where the Commission has made its preliminary findings, the Commission shall publish a preliminary report in the *Gazette*.

(2) The Commission shall make available a non-confidential report within seven days of the publication of the Commission's preliminary report.

(3) The preliminary report shall contain the following –

- (a) the identity of the applicant;
- (b) a full description of the product under investigation;
- (c) the date of the decision of the Commission to initiate the investigation;
- (d) initiation date and notice number;
- (e) the date of the preliminary findings of the Commission 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; and
- (j) the Commission's finding.

(4) The preliminary report shall while preserving the requirements of confidentiality contain relevant issues of fact and law considered by the Commission when reaching the Commission's preliminary determination.

Comments on preliminary report

21.(1) An interested party shall within 14 days from the date the preliminary report is made available, make comments to the report in writing.

(2) The Commission may grant an interested party an extension on the deadline under subregulation (1) where such interested party shows good cause why an extension should be granted.

(3) A request for an extension to the deadline shall be made in writing at least seven days prior to such deadline, and the request shall contain a proper motivation for the request.

(4) Other than under subregulation (5), the Commission shall not accept any new information after the Commission's preliminary finding.

(5) Where an interested party has submitted a deficient response, and has addressed the deficiency prior to the deadline under subregulation (1), such interested party, may subject to the discretion of the Commission and the requirements to finalise an investigation timely, be deemed to be a cooperating party, and the Commission may consider the party's information in the Commission's final finding.

Conclusion of investigation

22.(1) Upon conclusion of an investigation, the Chief Executive Officer shall submit recommendations to the Board in terms of section 31(6) of the Act.

(2) Upon receipt of the recommendation under subregulation (1), the Board shall make a determination regarding –

- (a) whether a dumping margin exists regarding the subject products, and the amount of such margin; and
- (b) whether –
 - (i) the subject product is through the effects of dumping, causing or threatening to cause material prejudice to the SACU industry in producing like products, or

- (ii) the subject product is through the effects of dumping, materially impeding the establishment of the SACU industry.

(3) Where the Board makes a negative final determination, the Board shall cause the Commission to terminate the investigation and publish a notice of the negative determination and the reasons for the negative determination.

(4) The Commission may, where an applicant requests, grant the SACU industry an oral hearing to discuss the reasons for rejecting the application.

(5) Where the Board makes an affirmative determination, the Board shall recommend to the SACU Tariff Board for the imposition of an anti-dumping duty on the subject product which is being investigated.

(6) The recommendation under subregulation (5) shall be accompanied by a report which contains the following –

- (a) the identity of the applicant;
- (b) a full description of the product under investigation;
- (c) the initiation date and notice number;
- (d) the margin of dumping;
- (e) the methodology used by the Commission to determine the margin of dumping;
- (f) the injury factors considered;
- (g) the causality factors considered; and
- (h) the Board's finding.

(7) The report shall while preserving the requirements of confidentiality, contain relevant issues of fact and law considered by the Board in considering a recommendation to the SACU Tariff Board.

Withdrawal of application for investigation

23.(1) An applicant may withdraw an application at any time after an investigation has been initiated, and the Commission shall terminate the investigation.

(2) Where the Commission determines that it is in the public interest to continue an investigation, the Commission shall not withdraw an application and such investigation shall be continued.

Termination for insufficient evidence, de minimis or negligible volume

24.(1) The Commission shall terminate an investigation at any time where the Commission is satisfied that there is insufficient evidence of dumping, injury or causal link.

(2) The Commission may terminate an investigation where the Commission determines that the dumping margin is *de minimis*, the volume of dumped imports, actual or potential is negligible, or the injury, is negligible.

Determination of like product

25. The Commission may, in determining whether a product has characteristics closely resembling those of a product under investigation consider –

(a) the raw materials and other inputs used in producing the product;

(b) the production process;

(c) the physical characteristics and appearance of the product;

(d) the end-use of the product;

(e) the substitutability of the product with the product under investigation;

(f) tariff classification; or

(g) any other factor proven to the satisfaction of the Commission to be relevant.

Determination of normal value

26.(1) Where an industry involves a 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.

(2) Where there is no sale of a like product in the ordinary course of trade in the domestic market of an exporting country, the Commission shall determine the normal value of the investigated product.

(3) The Commission shall consider a domestic sale or export sale to a third country to be not in the ordinary course of trade if the Commission determines that such a sale –

(a) took place at a price below total costs, including cost of production and administrative costs, selling, general and packaging costs:

Provided such a sale took place –

- (i) in a substantial quantity 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 one year, but in not less than six months;
 - (b) was made to a related party; or
 - (c) does not reflect normal commercial quantities.
- (4) A domestic sale of a like product shall be considered a sufficient volume to determine a normal value if such sale constitutes 5 per cent or more of the sales volume of the product to the SACU.
- (5) The Commission may deem a sale representing less than 5 per cent of the export sales to the SACU to be sufficient where such sales are of sufficient magnitude to provide for a proper comparison.
- (6) Where the product is not shipped directly from the country of origin and the product is exported to the SACU from an intermediate country, the price at which the product is 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.
- (7) An export may be deemed to originate in the country indicated –
- (a) on the certificate of origin;
 - (b) on the bills of entry; or
 - (c) in the import statistics provided by the Botswana Unified Revenue Service.
- (8) 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) a sample that is statistically valid on the basis of the information available to the Commission at the time of the selection.
- (9) Where the Commission decides to limit the Commission's investigations under subregulation (8), any selection may be made after there has been consultation with the relevant exporter.
- (10) Where the Commission has limited its investigation, the Commission shall 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 with the information of exporters or producers selected, except where the number of exporters or producers is large and an individual examination would be unduly burdensome to the Commission.

*Constructed
normal value*

27.(1) Where the Commission constructs a normal value, the Commission may do so on any reasonable basis including –

- (a) the cost of the producer or exporter concerned;
- (b) the cost of another producer in the same country;
- (c) the information contained in the application; or
- (d) any other information at the Commission's disposal.

(2) The cost build-up shall include –

- (a) cost of production;
- (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.

(3) The normal value under subregulation (1) shall be constructed using the producer's own costs and profit:

Provided that such cost –

- (a) reflects the actual costs of the product;
- (b) is Generally Accepted Accounting Practice (GAAP) consistent; and
- (c) is historically based.

(4) The selling, general and administrative expenses under subregulation (2) 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 of such expenses incurred by other sellers in that market,

(ii) with reference to the narrowest range of products that are identified, or

(iii) on any other reasonable basis.

(5) The reasonable profit margin that is included in the constructed normal value shall be determined with reference to –

(a) the actual profit realised on a sale of the product under investigation;

(b) the actual profit realised on a sale of the narrowest range of products that can be identified;

(c) the average of such actual profit realised by another seller on a sale of the same category of products in that market where 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 included shall be based on the actual profit realised on sales before extraordinary items, interest, tax and any other circumstances that may affect such profit margin.

(6) The Commission may determine the normal value of the product under consideration for the foreign producer or country in question on the basis of –

(a) the normal value established for or in a third country; or

(b) the cost and profit of the company in question as listed under subregulation (2), and in accordance with this regulation.

(7) Where the Commission determines the normal value in terms of subregulation (6)(b), such cost inputs shall be accorded the market related cost of the different inputs, whether determined in that country or in a third country.

(8) For purposes of this regulation, “constructed normal value” means a price of a subject product calculated where there are no sales in the exporting country market.

Related foreign market producer and reseller

28.(1) Where a foreign producer sells a product under investigation on the foreign producer’s domestic market through a related party –

(a) the normal value shall be determined as the resale price to the first independent buyer; and

(b) where such a 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 an independent buyer only, or

(ii) where there are no such sales to an independent buyer, on any other reasonable basis.

(2) Where a party has a domestic sale both through a related party or unrelated party, the Commission may decide to use the sales to unrelated parties.

*Constructed
export price*

29. (1) An export price shall be a price actually paid or payable for an investigated product when sold for export from the exporting country.

(2) Where there is no export price or where it appears to the Commission that the export price is unreliable, the export price may be determined –

(a) on the basis of the price at which an imported product is first resold to an independent buyer; or

(b) where the product is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Commission may consider appropriate.

(3) The Commission may construct an export price from the first point of resale to an independent buyer where –

(a) there is no export price at the time of importation;

(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.

(4) When constructing an export price the Commission shall deduct –

(a) the cost between the exporter and the importer; and

(b) a reasonable profit.

(5) The Commission may determine the reasonable profit by –

(a) calculating the total cost to the producer or exporter;

(b) calculating the total cost to the importer, including costs from the ex-factory export point of the producer or exporter;

- (c) calculating the total profit realised by both the producer or exporter and the importer; and
 - (d) allocating the profit in the same ratio as the cost incurred by the two parties.
- (6) The reasonable profit allocated under subregulation (5) shall not be less than zero.
- (7) The Commission may construct the export price on any reasonable basis where –
 - (a) the imported product is not resold;
 - (b) the imported product is not resold in the same condition imported; or
 - (c) information on the resale price is not available.
- (8) For purposes of this regulation, “constructed export price” means a price which is calculated where there is no export price, or where it appears to the Commission that the export price is unreliable.

Comparison of normal value and export price

- 30.(1) The Commission shall make an adjustment in each case, on its merit for differences which affect price comparability at the time of setting a price, including –
- (a) conditions and terms of trade;
 - (b) taxation;
 - (c) levels of trade;
 - (d) physical characteristics; and
 - (e) quantity.
- (2) The Commission shall request the adjustment in the interested party’s original response to the relevant questionnaire, and the adjustment shall 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 the price.

(3) The Commission shall make a comparison between the normal value and the export price at the ex-factory level and between a sale at the same level of trade, such as at distributor, wholesale or retail level.

(4) The Commission shall make the comparison under subregulation (3) on the same terms of trade, including packaging, terms of delivery and payment terms.

(5) The Commission shall make the comparison between the normal value and the export price on a weighted average to weighted average basis, but such comparison may be made on a transaction-by-transaction basis where the circumstances require such comparison.

(6) Where the Commission finds a pattern of an export price which differs significantly among different purchasers, regions or time periods, a normal value established on a weighted average basis may be compared to a price of an individual export transaction.

(7) Where the Commission has determined the margin of dumping, the Commission shall indicate reasons for its decision in all subsequent reports.

Currency conversion

31.(1) Where a price comparison requires a conversion of currency, the Commission shall make such conversion based on the rate of exchange on the date of sale.

(2) The date of sale shall be the date of contract, purchase order, order confirmation or invoice, whichever establishes the material terms of sale.

(3) The Commission shall not take into account fluctuations in exchange rates.

Margin of dumping

32.(1) The Commission shall determine a dumping margin for each product under investigation.

(2) 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.

(3) The Commission may limit the investigation to a representative sample where the number of exporters, producers, importers or type of products involved is large to an extent that an individual examination would –

(a) either be unduly burdensome to the Commission and prevent timely completion of the investigation; or

(b) make it impracticable to determine an individual dumping margin for each known exporter or producer of a product under investigation.

(4) For the purposes of subregulation (2), the margin of dumping shall be applied as follows –

- (a) individual margins of dumping; or
- (b) the weighted average of the margins applied to the representative sample of exporters by using information available at the time of the selection.

Material injury

33.(1) The Commission shall when determining material injury to the SACU industry, verify the existence of a significant increase in dumped imports, either in absolute terms or relative to production or consumption within SACU.

(2) The Commission shall with regard to the effect of the dumped imports on prices consider whether –

- (a) there is a significant price undercutting by the dumped imports as compared with the price of the SACU industry like product;
- (b) the effect of such imports is to depress the price of the like product to a significant degree; or
- (c) the effect of such imports is to prevent the price increase which otherwise would have occurred.

(3) The Commission shall when determining material injury to the SACU industry, verify the economic effects of the dumped imports on the SACU industry reflected in the following –

- (a) the actual and potential decline in sales, profits and loss, production, market share, productivity, return on investment or utilisation of capacity;
- (b) magnitude of the margin of dumping;
- (c) the actual and potential negative effects on cash flow, inventories, employment, wages, investment, growth and ability to raise capital or investment; and
- (d) any other factor that the Commission may deem to be significant.

Threat of material injury

34.(1) The Commission shall when determining a threat of injury to the domestic industry, verify that the threat of injury is clear and imminent.

(2) The Commission shall when making a determination under subregulation (1) consider the following –

- (a) the rate of increase of the dumped imports;

- (b) the likelihood of significant increase in dumped imports into the domestic market of the SACU in light of contracts or future purchase orders;
- (c) whether the imports are entering the SACU market at a price that will have a significant depressing or suppressing effect on SACU prices, and would likely increase the demand for further imports;
- (d) the existence of significant export capacity or inventories of the product in question in the exporting companies; and
- (e) any other factor which the Commission may determine to have an economic effect on the industry.

Material retardation of establishment of industry

35.(1) The Commission shall not initiate an investigation on the basis of a material retardation of the establishment of SACU 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.

(2) The Commission may request a provisional payment or recommend an anti-dumping duty where the establishment of such SACU industry is materially retarded by dumped imports.

(3) Where significant progress has not been made to establish an industry in accordance with subregulation (2) within one year following the imposition of an anti-dumping duty, the Commission may recommend that the anti-dumping duty be withdrawn.

Causality

36.(1) The Commission shall determine whether there is a causal link between dumping and the material injury under regulation 33.

(2) The causal link between the dumped imports and the injury to the SACU industry shall be based on an examination of relevant factors including –

- (a) the change in 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 in relation to the imported product;
- (c) the market share of the dumped import;
- (d) the magnitude of the margin of dumping; and
- (e) the price of the undumped import available in the market.

(3) The Commission may cumulatively assess the effect of the dumped import only where the Commission finds that cumulation is appropriate in-light of –

- (a) competition between imports from different countries;
- (b) competition between the imported products and the SACU like products;
- (c) the imports from the countries are not negligible; and
- (d) the margin of dumping is two per cent or more when expressed as a percentage of the export price.

(4) The Commission shall examine any known factor other than the dumped import which at the same time is injuring the SACU industry, and any other injury caused by such factor shall not be attributed to the dumped imports.

(5) The factors that may be relevant under subregulation (4) shall include –

- (a) the volume and price of imports not sold at a dumping price;
- (b) the contraction in demand or changes in the patterns of consumption;
- (c) the trade restrictive practice and competition between the foreign and domestic producers;
- (d) any development in technology;
- (e) the export performance and productivity of the SACU industry; and
- (f) any other factor affecting the SACU prices.

Lesser duty rule

37.(1) The Commission may apply the lesser duty rule where both the corresponding importer and exporter have cooperated fully.

(2) For purposes of this regulation, “lesser duty” means a provisional payment or anti-dumping duty imposed at the lesser of the margin of dumping or the margin of injury, and is deemed by the Commission to be sufficient to remove the injury caused by the dumping.

Verification of information

38.(1) The Commission may, during the course of an investigation, satisfy itself of the accuracy of the information supplied by an interested party by conducting a verification as the Commission may deem necessary.

- (2) The Commission may when carrying out the verification, conduct an on-the-spot verification visit to obtain information and data required for the investigation.
- (3) In order to carry out the verification, the Commission may inform the interested party concerned of the date of an intended verification visit by the Commission.
- (4) The Commission shall inform the Government of the country concerned of the date of the intended verification visit, and conduct the verification on such date unless that Government of the country concerned objects to the verification.
- (5) Where the Government of the country concerned objects to the Commission's verification, the Commission may –
- (a) make a preliminary or final decision based on the facts available; and
 - (b) exclude any information submitted by any party in that country.
- (6) The Commission may terminate any verification activity and disregard the information submitted by an interested party, and come to a conclusion according to the best information available, where for purposes of a verification, the interested party –
- (a) refuses to attend the verification;
 - (b) refuses the Commission access to relevant information;
 - (c) fails to provide information within the timeline set by the Commission; or
 - (d) otherwise acts so as to impede the verification process.
- (7) The Commission shall after the verification visit, prepare a report stating the information which was verified and which information was not available for verification.
- (8) The failure by interested parties to agree on the information verified shall not preclude the Commission from using such information in the Commission's findings.
- (9) The Commission shall keep and maintain a public register which shall be open to the public for inspection and a non-confidential verification report shall be placed on such register.
- (10) An interested party shall be given seven days to comment on the verification report and where an interested party shows good cause why an extension is to be granted, the Commission may grant such extension.

Communication of final decision of SACU Council

39.(1) Where the SACU Council has considered a recommendation in relation to an investigation, the Commission shall in writing, inform the applicant of the outcome of the applicant's application.

(2) The Commission shall by Notice in the *Gazette* publish the decision of the SACU Council.

(3) The Notice under subregulation (2) shall give details of the findings and conclusions reached on issues of fact and law which led to the decision of the SACU Council.

Non-cooperation by exporter or foreign producer

40.(1) Where an exporter or producer from another country fails to cooperate in an investigation by the set deadline, the Commission may request the imposition of a provisional payment on the basis of facts available.

(2) Where an exporter or producer in another country cooperates, while another exporter or producer does not cooperate, the Commission may, for the purposes of the non-cooperating exporter or producer, base the Commission's preliminary decision on the best information available.

(3) The Commission may split investigations between cooperating and non-cooperating exporters in order to expedite proceedings.

(4) Where an exporter has submitted a deficient submission by the set deadline, the Commission shall disregard the exporter's information for the purpose of the Commission's preliminary finding.

Duration of application of provisional measure

41.(1) The Commission shall not recommend an imposition of a provisional measure within less than 60 days after the initiation of an investigation.

(2) The provisional measure imposed under subregulation (1) shall not be applied for a period exceeding six months, and such period may be extended to nine months.

Definitive anti-dumping duty

42.(1) A definitive anti-dumping duty shall remain in place for a period of five years from the date of publication of the SACU Council's final decision unless otherwise specified, or reviewed by the Commission prior to the lapse of the five-year period.

(2) The definitive anti-dumping duty may be imposed with retroactive effect.

Price undertaking

43.(1) The Commission may suspend or terminate the proceedings where an exporter has made a satisfactory price undertaking to revise the exporter's price or to cease any export to the SACU at a dumped price so

that the Commission is satisfied that dumping or injurious effect is eliminated:

Provided that the Commission has made at least a preliminary determination in the matter.

(2) The Commission may decide on the information to be submitted in respect of the offering and maintenance of a price undertaking, and may terminate a price undertaking if the set conditions are not met.

(3) The exporter shall maintain the price undertaking for a reasonable period of time which is sufficient to eliminate the margin of dumping.

(4) The price undertaking by the exporter may not be accepted if the Commission considers the price undertaking's acceptance impractical, such as where the number of exporters is too great, or for other reasons, including reasons of general policy.

Acceptance of price undertaking

44.(1) A price increase under an undertaking shall not be higher than the amount by which a normal value exceeds an export price to eliminate a margin of dumping.

(2) Where the Commission declines to accept a price undertaking, the Commission shall –

(a) provide to the exporter or, where appropriate, the Government of the exporting country that offered the undertaking, the reasons for the Commission's decision; and

(b) provide the exporter or Government an opportunity to make written comments on the decision.

(3) The Commission may require from any exporter or Government, from which an undertaking has been accepted, periodical information relevant to the fulfilment of the undertaking, and to permit verification of any pertinent data.

Notification of price undertaking

45.(1) Where the Commission accepts a price undertaking, the Commission shall by Notice in the *Gazette* publish such decision and the Notice shall include the non-confidential part of the price undertaking.

(2) A copy of the Notice under subregulation (1) shall be forwarded to the Government of the country of the products which are the subject of the price undertaking, and to any other interested party.

Completion of investigation

46. Notwithstanding the fact that a price undertaking has been accepted, the Commission may upon request by an exporter, or where the Commission thinks fit, complete an investigation.

- Violation of price undertaking* 47. Where a price undertaking is being violated, the Commission may –
- (a) resume an anti-dumping investigation and make a determination on facts available; and
 - (b) in the interim, while undertaking the anti-dumping investigation, recommend for imposition of a provisional measure.

PART IV – *Review*

- Initiation of review* 48.(1) A person or a representative of an interested party shall make a written application to initiate –
- (a) an interim review;
 - (b) a sunset review;
 - (c) a new shipper review; or
 - (d) an anti-circumvention review.
- (2) Notwithstanding subregulation (1), the Commission may initiate a review without having received a written application from any relevant interested party, and in such a case, the Commission shall proceed only where the Commission has sufficient evidence of a significant change in circumstances relating to dumping, material injury or a causal link, to justify the initiation of such review.
- (3) The Commission shall initiate a review through a Notice in the *Gazette* and such Notice shall indicate the following –
- (a) the identity of the applicant;
 - (b) the product under consideration;
 - (c) the investigation period for dumping and injury;
 - (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.

- Notification* 49. (1) Where the Commission receives a properly documented application for review, the Commission shall notify the Government of a country concerned of such application.
- (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 as the review in question has been initiated in accordance with regulation 48(3).

Response by interested party

50.(1) An interested party shall be issued a questionnaire in a format to be determined by the Commission, to note his or her response to a Notice referred to in regulation 48(3).

(2) An interested party shall be deemed to have received the questionnaire seven days after the dispatch of the questionnaire by the Commission.

(3) An interested party shall, upon receipt of the questionnaire submit the party's response to the Commission within 30 days after receipt.

(4) The deadline for submission by an interested party not directly informed of the review by the Commission shall be 40 days from the date of the Notice referred to in regulation 48(3).

(5) A response by an interested party shall be in a format to be determined by the Commission, and where relevant, the provisions of regulation 9 shall apply.

(6) A response that is not accompanied by a non-confidential version or a response not otherwise clearly indicated as confidential, may be treated as non-confidential.

(7) Failure by an interested party to comply with this provision may result in the submission being regarded as deficient.

PART V – *Interim Review*

Time frame

51. The Commission shall consider an application for an interim review under regulation 48(1)(a) 12 months after the publication of SACU Council's final finding in the original investigation or the previous review.

Commission changed circumstances

52.(1) The Commission shall only initiate an interim review if the party requesting such interim review can prove that the circumstances have significantly changed.

(2) Where an interested party has not cooperated in the Commission's investigation that led to the imposition of the anti-dumping duty, and such interested party is subsequently willing to supply such information, such change in disposition shall not qualify as significantly changed circumstances.

(3) An interested party shall not be precluded by the Commission 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 duty.

Interim review procedure

53.(1) An interim review shall consist of a single investigation phase.

(2) The Commission may verify such information as the Commission deems necessary to confirm the accuracy and adequacy of the information submitted by any interested party.

Commission's recommendation under interim review

54. (1) The Commission's final finding shall be in the form of a recommendation to the SACU Tariff Board and may result in an increase, decrease, withdrawal or reconfirmation of an existing anti-dumping duty.

(2) The SACU Council may increase, decrease or confirm the scope of application of such anti-dumping duty.

PART VI – *New Shipper Review*

Eligibility

55. (1) An exporter that did not export to SACU during an investigation period for dumping may request a new shipper review.

(2) The exporter requesting a new shipper review under subregulation (1) shall provide sufficient information to prove that the exporter is not related to any party to which an anti-dumping duty was applied.

(3) The Commission shall not consider a request for a new shipper review before a definitive anti-dumping duty has been imposed.

Information required under new shipper review

56. (1) A new shipper shall –

(a) provide the Commission with full information on the normal value, export price and any other information deemed necessary by the Commission; and

(b) submit such information in a format to be determined by the Commission.

(2) Where a new shipper has not exported any product to SACU during the period under review, the new shipper shall provide the Commission with the required information in the form to be determined by the Commission.

Suspension of anti-dumping duty

57. (1) An anti-dumping duty in respect of a new shipper shall be withdrawn simultaneously with the initiation of a new shipper review.

(2) The Commission may recommend to the SACU Tariff Board to impose a provisional payment at the same level as the anti-dumping duty, simultaneously with the withdrawal of the anti-dumping duty, and such provisional payment shall remain in force for the duration of the new shipper review.

*New shipper
review procedure*

58. (1) A new shipper review shall consist of a single investigation phase.
- (2) The Commission may verify such information as the Commission deems necessary to confirm the accuracy and adequacy of any information submitted by any interested party.
- (3) An exporter's margin of dumping shall be determined as the difference between the normal value and the export price to the member state.
- (4) Where no export price to a member state is established, the Commission may determine the export price on any reasonable basis including reference to the new shipper's export price to an appropriate third country.

*Commission's
recommendation
under new
shipper review*

59. The Commission's final finding may result in a recommendation to the SACU Tariff Board for –
- (a) imposition of an anti-dumping duty equal to or lower than the margin of dumping; or
- (b) termination of the provisional payment.

PART VII – *Sunset Review*

*Duration of anti-
dumping duty*

60. (1) An anti-dumping duty shall be valid for a period not exceeding five years from the imposition of a sunset review or from the last sunset review.
- (2) Where a sunset review has been initiated prior to the lapse of an anti-dumping duty, such anti-dumping duty shall remain valid until the sunset review has been finalised.

*Initiation of
sunset review*

61. (1) Approximately six months prior to the lapse of an anti-dumping duty, the Commission shall publish a Notice in the *Gazette* which indicates that such anti-dumping duty shall lapse on a specific date unless a sunset review is initiated.
- (2) The Commission shall directly inform an interested party known from an investigation or last sunset review of the subject product, of the imminent lapse of the anti-dumping duty as soon as the Notice under subregulation (1) has been published.
- (3) An interested party shall request the Commission for a sunset review within 30 days from the date of publication of the Notice under subregulation (1).
- (4) Where the Commission decides to initiate a sunset review, the Commission shall publish an initiation Notice in the *Gazette* prior to the lapse of an anti-dumping duty.

Notification of lapse of anti-dumping duty

62.(1) The Commission shall notify the Government of any country concerned, of the imminent lapse of an anti-dumping duty.

(2) The Commission shall notify the Government of the country concerned and any other interested party of –

(a) the initiation of the investigation; or

(b) the termination of the proceeding,

after publication of the Notice under regulation 61(1).

Sunset review procedure

63.(1) A sunset review shall consist of a single investigation phase.

(2) The Commission may verify such information as the Commission deems necessary, to confirm the accuracy and the adequacy of any information submitted by any interested party.

Information required under sunset review

64.(1) After the publication of a Notice under regulation 61(1), the SACU industry shall indicate whether the SACU industry shall request a sunset review to be undertaken.

(2) The SACU industry shall provide the Commission with detailed information in the manner provided by the Commission, indicating the likelihood of a continuation or recurrence of dumping and injury in the event that the anti-dumping duty is removed.

(3) Where a sunset review has been initiated, an exporter or a foreign producer shall be required to submit information in the required format to enable the Commission to make a finding on the dumping.

(4) An exporter or a foreign producer shall not be precluded from supplying any other information that such exporter or foreign producer may deem relevant.

(5) The Commission may require an importer to supply any information the Commission deems necessary, and such importer shall not be precluded from supplying any other information that he or she may deem relevant.

Non-cooperation

65.(1) Where the SACU industry does not request a sunset review, or does not supply the required information within the set deadline following a Notice published in the *Gazette*, the Commission shall recommend that the anti-dumping duty lapse on the date indicated in such Notice.

(2) Where the SACU industry has provided the required information, and an exporter or foreign producer does not cooperate within the set time frame, the Commission may rely on the facts available to reach the Commission's final decision.

*Commission's
recommendation
under sunset
review*

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

PART VIII – *Anti-Circumvention Review*

Circumvention

67.(1) Other than circumvention under subregulation (2)(a) and (d), circumvention shall be deemed to take place where one or more of the following conditions are met –

- (a) a change in the pattern of trade between third countries and Botswana or the common customs area of SACU which results from a practice, process or work 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; or
- (c) dumping can be found in relation to normal values previously established for the like or similar products.

(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) any minor modification 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 SACU;
- (d) the absorption of the anti-dumping duty by either an exporter or the importer;
- (e) country hopping;
- (f) declaration under a different tariff heading, even where such different tariff heading does provide for the clearance of that product; and

(g) any other form of circumvention as may be submitted for the Commission's consideration.

(3) Any instance of circumvention under subregulation (2)(a) shall be referred to the Botswana Unified Revenue Service for further investigation, and 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 any interested party, warrants such action.

(4) A minor modification of the product shall be deemed to have taken place where the subsequently exported product –

(a) has materially the same production processes, uses the same raw materials and has basically the same physical appearance or characteristics; or

(b) is a substitute for the product on which an anti-dumping duty has been imposed.

(5) Where value added in a third country or in the common customs area of SACU does not exceed 25 per cent or does not constitute a major transformation process, assembly in a third country or within the common customs area of SACU shall be deemed to have taken place.

(6) An assembly under subregulation (5) shall not be regarded as changing the country of origin.

(7) The value added in terms of subregulation (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.

(8) An absorption of the anti-dumping duty shall be deemed to take place where –

(a) the exporter decreases the exporter's export price in any manner to compensate the importer or a third party for the extra burden imposed by the anti-dumping duty, unless there is a correspondent decrease in the normal value of the product;

(b) the importer does not increase the importer's price in line with the anti-dumping duty, unless such importer can provide evidence indicating that the importer 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.

(9) For purposes of these Regulations country hopping shall be deemed to take place where an import, following the imposition of an anti-dumping duty or provisional payment 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.

(10) For the purpose of this regulation, “assembly” means to fit together separate component parts of the subject product.

Anti-circumvention review procedure

68.(1) An anti-circumvention review shall consist of a single investigation phase.

(2) Where an anti-circumvention review is lodged with the Commission prior to or within one year of publication of the SACU Council’s final determination, the SACU industry shall not be required to update the SACU industry’s injury information.

(3) Where an anti-circumvention review is lodged with the Commission prior to or within one year of the publication of SACU’s final finding, and in relation to any circumvention in regulation 67(2)(b), (c), (d), (e), (f) or (g), the Commission may use the normal value previously established to determine the margin of dumping until such time as the exporter or foreign producer has submitted proper information.

(4) Where a relevant interested party has not submitted appropriate information before the set deadline, the Commission shall make its decision on the basis of the facts available.

(5) Where there is a deficient response, an interested party will receive the opportunity to address any deficiency within a reasonable time and such additional information shall be taken into consideration by the Commission in its determination.

(6) In an anti-circumvention review 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.

(7) The Commission may conduct a verification where the Commission deems necessary, to confirm the accuracy and the adequacy of any information submitted by any interested party.

Information required under anti-circumvention review

69.(1) The SACU industry or other interested party shall provide the Commission with such information that is reasonably available to it to indicate that circumvention is taking place.

(2) Any request by the SACU industry for an anti-circumvention review shall include information of the specific type of circumvention that is alleged to take place.

(3) The Commission may require any interested party to submit such information as it deems necessary to properly conduct an anti-circumvention review.

(4) Where an interested party against which the allegation is made does not respond within the stated deadline, the Commission may make a decision on the facts available to it.

Commission's recommendation under anti-circumvention review

70. Where the Commission makes a finding that circumvention has taken place, the SACU Tariff Board's final recommendation may result in –

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

PART IX – *Miscellaneous*

Judicial review

71. A person aggrieved by the decision of the Commission may, within 30 days of the decision, approach the High Court for a review of such decision.

Application for refund

72.(1) An importer or an exporter may request the Commission for a reimbursement of an anti-dumping duty collected where it is clear that the dumping margin, on the basis of which an anti-dumping duty was paid, has been eliminated or has been reduced to a level which is below the level of the duty in force.

(2) Any request containing all the determined information for a refund shall, other than as stated under subregulation (1), be submitted to the Commission during the anniversary month of the anti-dumping duty, and shall relate only to the preceding 12 months period.

(3) An application for a refund shall –

- (a) be considered as duly supported by evidence where the application contains precise information on the amount of the refund of an anti-dumping duty claimed and all customs documentation relating to the calculation and payment of such anti-dumping duty; and

(b) include, for the relative period under review, information on the normal value and export price to the SACU for the producer or exporter to which the anti-dumping duty applies.

(4) An application for a refund shall be in a format to be determined by the Commission.

(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.

Refund following interim review

73. Where the Commission, following an interim review, recommends that the existing anti-dumping duty be decreased or withdrawn, the relevant importer may request that an anti-dumping duty be refunded in line with the SACU Council's final findings.

Offences and penalties

74. Any person who knowingly or wilfully provides false, misleading or incorrect information to the Commission, whether in an application received under these Regulations or otherwise in connection with an investigation under the Act, commits an offence and shall on conviction be liable to a fine of P2,000 or to imprisonment for a term not exceeding two years, or to both.

SCHEDULE

Application for anti-dumping investigation
(regulation 4(2))



BOTC
Botswana Trade
Commission

**APPLICATION FOR THE INITIATION OF AN ANTI-DUMPING
INVESTIGATION CONCERNING IMPORTS OF**

(insert product)

PRODUCT ORIGINATING IN OR EXPORTED FROM

(insert country/ies)

APPLICANT:

(insert name of company filing the application)

1. Introduction

1.1 This questionnaire should be completed by an applicant alleging that dumping of a particular product is causing material injury. It is important that the applicant provides all the information required in the prescribed manner.

1.2 When completing the questionnaire, please read all the instructions carefully. You should be aware that your response to the questionnaire and any subsequent additional requests formulated by the Commission will constitute the basis of which preliminary and final findings will be made regarding the investigation. Non-submission of all relevant information or the submission of incomplete information can have unfavourable consequences on the outcome of the investigation. In this respect, it is essential that your response to the questionnaire is accurate and complete as possible and should attach supporting documents. Do not leave any question or section blank.

2. Purpose

The purpose of this questionnaire is to help the Southern African Customs Union (SACU) industry bring together in a concise and logical form the information needed by the Botswana Trade Commission (Commission) to obtain information deemed necessary to decide whether or not to initiate a formal investigation and will also serve as a basis for further investigation.

3. Legal framework

3.1 Anti-dumping investigations are conducted in terms of (i) the Botswana Trade Commission Act, which mandates the Commission to investigate allegations of dumping within the Southern African Customs Union (SACU) and (ii) Botswana Trade Commission (Anti-Dumping investigation) Regulations (ADR) which provide for the manner in which the investigations are to be initiated and conducted.

3.2 Being a member of the World Trade Organisation (WTO), the Commission shall act consistently with Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Anti-Dumping Agreement.

3.3 This document is available at www.botc.org.bw

4. Submission of Confidential Information

4.1 If the response to the questionnaire is based in part on confidential material, it shall contain a non-confidential version of the confidential material together with an explanation of why it is confidential.

- (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 subparagraph (1) shall 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 paragraph 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 affidavit setting out the reasons why it is impossible to comply with subparagraph (i).

4.2 These summaries should be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. Therefore, where confidential and non-confidential versions are supplied, parties

shall –

- (a) indicate where information has been omitted in each case;
- (b) provide reasons for confidentiality in each instance;
- (c) provide a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information in each instance; and
- (d) where information is not susceptible to a non-confidential summary, indicate this in each instance and provide a sworn affidavit setting out the reasons why the information is not susceptible to summarisation.

The Commission will not accept as duly completed any response to its questionnaires unless a proper non-confidential version has been submitted. If the Commission finds that a request for confidentiality is not warranted and if the foreign manufacturer/ exporter is either unwilling to make the information public or to authorise its disclosure in summarised format, the Commission will not consider such information in determining the findings of the investigation.

5. General

4.1 Foreign manufacturers or exporters shall provide full and accurate information and provide supporting documentary evidence. The Commission will not consider unsubstantiated information. All cost related information should be reconcilable to the financial statements or management accounts.

4.2 Please take note that the rules relating to confidential information and the submission of non-confidential versions of your responses applies to **ALL correspondence, which unless clearly indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and be made available to other interested parties.**

4.3 If a document is indicated to be confidential but a proper non-confidential document complying with the above-mentioned rules is not filed, then the document will not be taken into consideration by the Commission. The

public file is available for inspection at the Commission's offices by all interested parties, by appointment.

4.4 Should you require an extension, kindly contact the officer in charge before the expiry of the deadline to request an extension. No request for an extension will be attended to unless they are received before the expiry of the deadline and provision of good cause for such extension.

4.5 Kindly note that a response submitted after the lapse of the deadline, or the submission of a deficient response may be rejected by the Commission. In this respect, the Commission may establish preliminary or final findings based on the information available in the application.

4.6 In accordance with ADR, the Commission is required to ensure that all interested parties are given reasonable opportunity to have access to all non-confidential information that is relevant to the presentation of their cases and that is used by the Commission in the investigation. To meet this requirement, all non-confidential documents relating to an investigation will be placed on a public file accessible to the public.

4.7 Regarding electronic submissions, both confidential and non-confidential versions shall be submitted electronically and shall be made on a flash drive, which shall be write-protected and labelled clearly indicating (i) the company's name, (ii) product(s) concerned and (iii) whether the information is confidential or non-confidential.

4.8 Further to the above mandatory submission formats, the company has an option to make additional submissions by email to (info@botc.org.bw). However, it shall be noted that submission by email may compromise your proprietary information and that of interested parties. If the company chooses this option, it does so at its own risk and the Commission is indemnified from any liability that may arise thereto.

4.9 Any documents, whether hard copies or electronic submissions, not complying

with the above formalities may be returned to the party submitting them and not be used by the Commission for the purpose of this investigation.

4.10 The response to this questionnaire, as well as to any other additional request formulated by the Commission, is to be made in hard copy and electronic form. Regarding hard copy submissions, the applicant shall submit one (1) original and three (3) copies of the original (both confidential and non-confidential versions) and address to:

Chief Executive Officer
Botswana Trade Commission
Plot 55745, Main Airport Road
Block 8 BOBS Building
Private Bag 3AAD
Poso House
Gaborone

4.11 The Commission has authority to verify any information provided in response to the questionnaire or any subsequent information provided.

4.12 The investigation is to be conducted in English and therefore only information for which an English version or translation is provided will be considered in the investigation.

4.13 In the event you encounter any difficulty in interpreting the information requested in this questionnaire, contact can be made to the officers in charge of the investigation.

GLOSSARY

<i>ADR</i>	Anti-Dumping Regulations
<i>Anti-Dumping Agreement</i>	Agreement on Implementation of Article VI of General Agreement on Tariffs and Trade 1994
<i>Commission</i>	Botswana Trade Commission (BOTC)
<i>BOTC Act</i>	Botswana Trade Commission Act
<i>SACU</i>	Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Eswatini)
<i>WTO</i>	World Trade Organisation

The next paragraphs deal with specific information relating to the product concerned.

PARAGRAPH A APPLICANT

A1 Company: _____
Postal Address: _____
Physical Address: _____

Tel: (____) _____ Fax: (____) _____
Email: _____

Please attach a map indicating how to reach you as Annex A1.

Applicant's production relative to total SACU production (%) is:

A2 The applicant's manufacturing sites are situated at:

Physical Address: _____

Please attach a map as Annex A2 (if different to A1)

A3 State the names, telephone numbers of and positions held by the company's officers to be contacted.

Person: _____
Designation: _____
Direct line: (____) _____
Direct fax: (____) _____
Email: _____

*Note: The contact person should be somebody that has been involved with the completion of the Questionnaire and that would be in a position to answer questions the Commission might raise.

A4 If you have appointed a representative to assist you in this proceeding, please provide the following details about the representative.

Person: _____

Designation: _____
 Direct line: () _____
 Direct fax: () _____
 Email: _____

Attach a copy of the letter of appointment, a template is enclosed as Annexure A4.1. Alternatively, if you have appointed a legal representative to assist you in these proceedings, attach the original Power of Attorney. A template is enclosed as Annexure A4.2.

*Note: Without authorisation in accordance with template A4.1 or A4.2, the Commission will only liaise with the contact person and cannot engage in any contact with the nominated representative. This is to protect the Commission and prevent the unauthorised release of any information that might be regarded as confidential.

- A5 Provide a diagram of your company's group structure and indicate the percentage stockholdings and cross-holdings. Attach information as Annexure A5
- A6 Indicate all shareholders holding more than 5% of equity in your company.

Name of Shareholder	Number of shares	Percentage shareholding

- A7 Kindly include the following information:
 - (a) Articles of Association (if applicable);
 - (b) Company constitution (if applicable);
 - (c) Proof of registration of the company with the competent Authorities;
 - (d) Shareholding certificate issued by the competent authorities (if applicable);
 - (e) Minutes of Board of Directors /shareholders meeting authorising the applicant to lodge the application

- A8 The applicant is an industrial organisation/public company/private company/closed corporation/other (please specify).
- A9 Indicate the franchise, manufacturing, licensing, know-how, technology and distribution agreements in place in respect of inputs, manufacturing and outputs, and which relate to the product that is the subject of this application:
- _____
- _____
- A10 Name the product allegedly being dumped: _____
- A11 Country of origin/export: _____
- A12 Indicate which of the following is the basis for normal value:
- (a) The normal value is based on domestic sales in the country of origin
 - (b) export price to a third country
 - (c) a constructed normal value
- A13 List the factors in respect of which actual material injury/a threat of material injury/the material retardation of the establishment of an industry is alleged.
- (i)
 - (ii)
 - (iii)
 - (iv)
 - (v)
 - (vi)

PARAGRAPH B PRODUCTS

Note on like product

ADR defines like product as –

- (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.

B1 Imported (subject) product

Note If there is more than one imported product competing directly with the SACU product, information should be submitted separately for each such product.

B1.1 Give a full description of the imported product.

B1.2 The main raw materials/components/inputs used in the production is/are

B1.3 The production process used is as follows:

B1.4 The products' technical characteristics and appearance are as follows:

B1.5 The application and end-use of the products is for

B1.6 The SACU like product is substitutable with the imported product to the following extent:

B1.7 The following tariff dispensation applies to the imported product:

Tariff subheading	Description	Unit of measurement	Rate of customs duty	Rebate provision item number	Rebate provision description

B1.8 Indicate if you are aware of any possible loopholes in the tariff classification, i.e.

whether the product can be imported under any other tariff heading.

Substantiate your answers to B1.1 with catalogues, brochures and other literature/samples.

B2 SACU like product

Note: If remedial action is requested in respect of more than one product, the following information should be submitted separately for each product. Where the application is lodged in respect of numerous product lines, e.g. shoes, car tyres or circuit breakers, a sample shall be selected for investigation purposes and the basis for determining the sample shall be indicated. Note that the Commission may request information relating to products falling outside the sample after it has received the exporters' and importers' responses.

B2.1 Give the name and description of the SACU product _____

B2.2 The main raw materials/components/inputs used in the production are

B2.3 The production process used is as follows

B2.4 The products' technical characteristics and appearance are as follows:

B2.5 The application and end-use of the SACU product is for

B2.6 The following tariff dispensation applies to the SACU product:

Tariff subheading	Description	Unit of measurement	Rate of customs duty	Rebate provision item number	Rebate provision description

B2.7 Enumerate in detail any differences between the imported product and the SACU like product

B2.8 Give details of all standards/specifications applicable to the product concerned in the SACU prescribed by law or otherwise

B3 Like product in the country of export/origin

B3.1 Give the name and description of the product sold in the exporting country

B3.2 The main raw materials/components/inputs used in the production is/are:

B3.3 The production process used is as follows

B3.4 The products' technical characteristics and appearance are as follows:

B3.5 The application and end-use of the products is for

B3.6 The SACU like product is substitutable with the imported product to the following extent:

B3.7 Enumerate in detail any differences between the imported product and the like product sold in the country of origin and/or export:

PARAGRAPH C INTERESTED PARTIES

C1 If there is a **SACU representative organisation** submit the following information:

(a) Names, address, telephone and fax numbers and E-mail addresses of and position held by the organisation's officers to be contacted;

Name of organisation: _____

Name of contact person: _____

Designation: _____

Postal address: _____

Physical address: _____

Tel: () _____

Fax: () _____

Email: _____

(b) Name the producers in the industry affiliated to the organisation and supply the following information:

Company: _____	Company: _____
Postal address: _____	Postal address: _____
Physical address: _____	Physical address: _____
_____	_____
Contact person: _____	Contact person: _____
Designation: _____	Designation: _____
Tel: () _____	Tel: () _____
Fax: () _____	Fax: () _____
Email: _____	Email: _____

C2 Name all other producers constituting the SACU industry concerned as provided below:

Company: _____	Company: _____
Postal address: _____	Postal address: _____
Physical address: _____	Physical address: _____
Contact person: _____	Contact person: _____
Designation: _____	Designation: _____
Tel: () _____	Tel: () _____
Fax: () _____	Fax: () _____
Email: _____	Email: _____

An investigation can only proceed if the application has a minimum level of support from the SACU industry, i.e. if it is brought by or on behalf SACU industry. The requirement is that

“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.”

Without this support BOTC cannot accept an application for investigation. Letters of support for or opposition to the application shall be attached to the application as Annexure C2.

C3 Indicate the industry support and/or opposition to the application in the following format:

Industry Standing (Total domestic production of like goods for the 12 months preceding the lodging of the application)			
Producer	Production volume- Support Application	Production volume- Oppose application	Production volume- Neutral
Your Company			
Other producers			
1.			
2.			
3.			
Total SACU			

C4 Give details of exporters and foreign producers in the investigation in the following format:

Company: _____	Company: _____
Postal address: _____	Postal address: _____
Physical address: _____	Physical address: _____
_____	_____
Contact person: _____	Contact person: _____
Designation: _____	Designation: _____
Tel: () _____	Tel: () _____
Fax: () _____	Fax: () _____
Email: _____	Email: _____

C5 Give details of the importers of the product under investigation in the following format:

Company: _____	Company: _____
Postal address: _____	Postal address: _____
Physical address: _____	Physical address: _____
_____	_____
Contact person: _____	Contact person: _____
Designation: _____	Designation: _____
Tel: () _____	Tel: () _____
Fax: () _____	Fax: () _____
Email: _____	Email: _____

PARAGRAPH D DUMPING

The purpose of this Paragraph D is to provide the information needed for a proper comparison of export price and normal value (exported products' domestic selling price).

Note: Low prices do not necessarily mean that imports are dumped. Dumping is the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price which is less than the normal value of those goods.

D1 Normal value

The applicant shall provide information on the normal value. Normal Value is –

“(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 country or surrogate country, as long as that price is representative;”

D2 Wherever possible, normal value should be established on the basis of the domestic selling price in the exporting country before turning to determine the normal value with reference to the export price from that country to a third country or constructing the normal value. Where you cannot obtain a domestic selling price in the exporting country clearly indicate your attempts to obtain a domestic selling price in the exporting country.

D3 Identify the source of your information and substantiate all your replies to this paragraph with documentary evidence.

D4 If the product is sold on the exporter's domestic market, invoices, price lists and

advertisements containing prices can be used to establish a normal value. In the case of a cost build-up all the main inputs shall be substantiated by the necessary documentation such as international commodity prices, publication and internet information.

D5 Domestic selling price in country of origin

D5.1 Furnish the price charged on the exporter's domestic market. Ideally this should be the net ex-factory selling price exclusive of all internal taxes. If this is not available submit the price available to you (e.g. a retail invoice, a retail advertisement, price list, international publication, etc) on which the allegation of dumping is based. Attach evidentiary proof as Annexure D5.1.

D5.2 Indicate the adjustments that need to be made to obtain a net ex-factory level. This should include at least the following –

- (a) Transport, where sold on a delivered basis;
- (b) Payment costs, based on the estimated payment days and the applicable short-term borrowing interest rate in the exporting country; and
- (c) Level of trade adjustment, if the product is not sold on the same basis as the exports to SACU, e.g. adjusting back from retail to a wholesale price.

Submit evidence substantiating the adjustments you have made and attach information as Annexure D5.2.

D6 Normal value other than on basis of domestic selling price

D6.1 (a) Indicate your attempts to obtain a domestic selling price in the exporting country and provide documentary evidence thereof.

(b) Where there are no sales on the exporter's domestic market give the reason why you believe that there are no sales of the like product in the exporter's domestic market.

(d) Where domestic sales do not allow for a proper comparison with the exports to Botswana, give the reasons why you believe that the sales in the exporter's domestic market do not allow for such comparison, e.g. it is insignificant in comparison with total output.

- (e) Where you believe that domestic sales are not made in the ordinary course of trade, i.e. made at a loss, or past or present government intervention to the effect that the normal value does not properly reflect the intrinsic value of the product, submit evidence to support your view.

D6.2 In any one of the situations referred to in D6.1 provide information on one of the following options as the basis for normal value –

- (a) the price charged by the supplier concerned for exports to a third country market; or
- (b) the constructed normal value of the like product, exported to Botswana based on production costs in the country of origin, as far as possible in the format and detail indicated in **Annex D2.2**. The cost build-up format is only a guideline to indicate the level of detail required by the Commission. Each cost element shall be based on substantiated evidence and not merely on presumptions relating to your own cost information.

D6.3 In instances where the domestic selling prices in the exporting country are not reasonably available or the SACU industry is unable to determine whether the domestic selling prices of exports are comparable to prices in the ordinary course of trade, please provide the following:

D6.3.1 Nominate a third country and a producer of the like product in that country for the purpose of determination of a normal value for the product allegedly dumped product. The third country should have an industry at a similar level of development as that in the PRC. If more than one country is subject to the current application the information of that country may be used as the third country.

D6.3.2 When no third country is subject for anti-dumping action, the applicant shall preferably obtain the cooperation from a producer in a third country and submit a letter from that producer confirm that it is willing to cooperate with the investigation. Provide that producer's address, telephone and fax numbers, email address, and indicate the contact person.

D6.3.3 Provide the reasons for your nomination of the third country.

D6.3.4 Furnish the third country normal value. Ideally this should be the net ex-factory selling price exclusive of all internal taxes. If this is not available submit the price available to you (e.g. a retail invoice, a retail advertisement, price list, international publication, etc) on which the allegation of dumping is based.

D6.3.5 Indicate the adjustments that needs to be made to obtain a net ex-factory level and provide substantiation for the proposed adjustments. This should include at least the following:

- (a) Transport, where sold on a delivered basis;
- (b) Payment costs, based on the estimated payment days and the applicable short-term borrowing interest rate in the exporting country;
- (c) Level of trade adjustment, if the product is not sold on the same basis as the exports to SACU, e.g. adjusting back from retail to a wholesale price.

D7 **Export price**

Note: 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. Where there is no export price or it is unreliable for whatever reason, the export price can be determined on the basis of the price at which the imported goods are first resold to an independent buyer.

To enable proper comparison with the normal value, the export price should be at the net ex-factory level.

- D7.1 Give the export prices to the SACU of the products being the subject of the application (separately for each product, where possible). The export price shall be the price actually paid or payable for the investigated product when sold for export from the exporting country. To enable proper comparison with the normal value, the export price should be at the net ex-factory level.
- D7.2 Where there is no export price or the invoiced export price appears to be unreliable for any other reason, the export price may be constructed. If you are of the opinion that the export price is unreliable, give reasons and supply the following information:

Table D7.2: Constructed export price

	COST PER UNIT
Resale price of imported product to independent buyer	
<u>Less</u> adjustments:	
Transport (factory to harbour)	
Harbour and other expenses	
International freight	
Insurance	
Customs duty	
Clearance costs	
Agent's commission	
Transport to importer	
Importer's costs	
- Administration	
- Selling	
- Distribution	
- Profit	
Constructed ex-factory export price	

Supply a detailed breakdown of the cost items and provide supporting notes/evidence to substantiate your calculation.

Note: The constructed export price may also be used if no other export price can be obtained.

D8 Price comparison

Note: For the price comparison to be fair, the export price and the normal value should be on a similar basis and level as regards the physical characteristics of the product, the quantities sold, and the terms and conditions of sale. The comparison should be made at the same level of trade, preferably the ex-factory level. However, if the export price and normal value are not on a comparable basis, allowance should be made for any differences.

If the export price and normal value are not on a comparable basis, give the following information.

D8.1 Differences in physical characteristics.

If the product used for determining normal value is not identical to the exported product (refer to paragraph B) –

- (a) list the differences;
- (b) quantify the effect of the differences on the price of the product;
- (c) quantify the effect of the differences on the cost of production of the

product.

D8.2 Differences in taxation

If the product sold in the exporting country attracts any form of tax that is not incurred in export sales, e.g. VAT, consumption tax or recycle tax, indicate –

- (a) the conditions under which the tax is payable;
- (b) the tax rate; and
- (c) the effect of the tax on the normal value (excluding the tax).

D8.3 Differences in terms of trade.

If the product is exported to the SACU at different terms of trade (payment terms, delivery terms, warranties, guarantees, etc.), –

- (a) indicate the terms of trade for the product exported to the SACU;
- (b) indicate the terms of trade for domestic sales in the exporting country;
- (c) quantify the effect of the difference in the terms of trade on the price and submit details of your calculations; and
- (d) quantify the effect of the difference in the terms of trade on the cost of the product and submit details of your calculations.

D8.4 Differences in the levels of trade.

The level of trade refers to whether the product is sold to a wholesaler, retailer, end-user, through an agent, differences in the volumes sold, etc. If the level of trade of the product exported to the SACU is different to the level at which the like product is sold in the domestic market of the exporter: –

- (a) indicate the level of trade pertaining to the exported product;
- (b) indicate the level of trade pertaining to the like product sold in the domestic market of the exporter;
- (c) quantify the effect of the difference in the levels of trade on the price of the product and submit details of your calculations; and
- (d) quantify the effect of the difference in the levels of trade on the cost to sell the product and submit details of your calculations.

D8.5 Other differences.

If you are aware of any other differences affecting price comparability, including quantity rebates, direct marketing and sales expenses, credit insurance, etc, provide –

- (a) details of the differences; and
- (b) a substantiated estimate of the allowances to be made for each of the differences.

D9 Dumping margin

The dumping margin is the margin by which the normal value exceeds the export price after allowance has been made for any differences affecting price comparability. Give the margin of dumping and your calculation thereof separately per product model as follows –

	Currency
Normal value	
Less adjustments	
Adjusted normal value	
Export price	
Margin of dumping	
Margin of dumping expressed as a percentage of the export price	

Note: If the calculated margin of dumping is less than 2% the Commission will not initiate an investigation as a dumping margin of less than 2% is regarded as *de minimis* in terms of the *ADR*.

PARAGRAPH E MATERIAL INJURY

Note: Before the Commission can initiate an investigation into alleged dumping it shall have *prima facie* evidence to reach a reasonable conclusion that the alleged dumping is causing or threatening to cause material injury to a SACU industry.

The information requested shall relate only to the affected SACU product that is a like product to the product being imported under the alleged unfair trade practice. Where the available data does not allow separate identification of the product in question, the information given shall relate to the narrowest identifiable product group that includes the SACU product that is a like product to the product being the subject of the application.

The Commission requires the use of indexing as a non-confidential summary of figures, that is, the use of a base value in the first period for which information is submitted with deviations from the base value indicate for subsequent periods.

When an applicant produces more than one product the information submitted in this paragraph shall relate only to the product that forms the subject of this application.

Each producer in the Botswana industry should provide the following information. No investigation can be initiated unless at least 25% of all producers by volume support the application. Additionally, the Commission may not make a preliminary or final determination of injury unless it has considered evidence relating to "a major proportion" of the SACU industry.

E1 General information

- E1.1 Provide a flow chart of your marketing/distribution channels for the product(s) concerned in the application and indicate the percentage off-take for each channel.
- E1.2 Provide full details of your terms and conditions of sale and selling price to each class of customer, e.g. wholesaler, retailer, downstream producer, etc. Attach a copy of your standard terms and conditions as **Annexure E1.2**.
- E1.3 Give the reasons and basis for your categorisation of customers.
- E1.4 Enumerate major changes over the past three years in your answers to the above questions.

E2 FINANCIAL INFORMATION

Note: All financial information should be in a reconciled format. If such requested information is not readily available in the same format or needs adjustment or re-apportionment please qualify by way of explanatory notes or discuss the merits of the situation with the Commission.

- E2.1 Indicate your normal accounting period.
- E2.2 Provide copies of your audited financial statements, including detailed manufacturing, trading and profit and loss statements for the most recent three financial years. If your statutory statements do not include detailed accounts/schedules, please provide such accounts/schedules separately.
- E2.3 Provide copies of your year-to-date management accounts, including detailed manufacturing, trading and profit and loss accounts for the period between the last financial year end and the most recent month end. Provide ancillary schedules if not part of published accounts.
- E2.4 Provide a separate sales and profit (before tax) contribution analysis of all the product line items manufactured by your company, including a percentage analysis. The information should be sufficient to allow proper verification of your like product information.

The requested income statements should be analysed in a departmental or divisionalised format detailing the product concerned as a separate activity. The analysis should also be in respect of three prior financial years and the most recent year-to-date management accounts period. **If the requested information is not available from your financial database, please discuss alternatives with officials of the Commission.**

E3 Effects on the SACU prices

E3.1 Price depression

- E3.1.1 Provide the following information with regard to your average per unit ex-factory selling prices –

	Year 1	Year 2	Year 3
Your ex-factory price per unit			

State the unit of measurement

E3.1.2 If your prices decreased significantly during the last 12 calendar months please supply the average ex-factory prices for each of the last 12 months. Please attach as **Annexure E3.1.1**.

E3.1.3 Indicate any other factors that have depressed your ex-factory selling price that do not reflect in the above table, e.g. longer payment terms, higher year-end rebates, additional free stock, etc.

E3.2 Price suppression

E3.2.1 Provide the following information with regard to your average per unit ex-factory selling prices –

Table E3.2.1

	Year 1	Year 2	Year 3
Your ex-factory price per unit			
Your production cost per unit			
Your gross profit per unit			
Your gross profit%			
Your production cost as a % of selling price			

State the unit of measurement

E3.2.2 If price suppression is more pronounced during the last 12 months supply the information as requested in Table E3.2.1 separately for each of the last 12 months. Please attach as **Annexure E3.2.2**.

E3.2.3 Indicate any other factors that have suppressed your ex-factory selling price that do not reflect in the above table, e.g. longer payment terms on sales, shorter payment terms on purchases, higher year-end rebates, additional free stock, etc.

E3.3 Cost build-up

E3.3.1 Please supply a cost build-up in the format indicated in **Annexure E3.3.1**. Where your management accounts do not allow for the specific cost elements indicated in the pro forma, please indicate the information that is available and supply as much detail as possible.

E3.3.2 Please supply a Bill of Materials for the domestic like product.

E4 SACU INDUSTRY SALES

E4.1 Please supply the following information on your sales volume in SACU.

	Year 1	Year 2	Year 3
Your sales volume			
Sales by other SACU			

producers			
-			
-			
-			
Total volume of SACU sales by SACU producers			

State the unit of measurement.

- E4.2 If sales of the product is of a cyclical nature comment on the nature thereof, indicating the length of the cycle and the prices both during the up and down phases.

PROFIT AND LOSS

E5 Actual and potential decline in profit

- E5.1 Supply the following information regarding your profit for the product concerned (where the information cannot be supplied separately for the product concerned indicate the group of products to which the profit applies and submit your calculations, indicating how costs and profit were allocated):

	Year 1	Year 2	Year 3
Units sold			
Your total gross profit			
Your total net profit			

- E5.2 Comment on the actual and potential decline in your profits.

OUTPUT

E6 Actual and potential decline in output

- E6.1 Supply the following information regarding your actual production volumes over the last three years. Note that this should relate to total output of the product under consideration, regardless of whether destined for the domestic or export market.

	Year 1	Year 2	Year 3
Your total production of the product concerned			
Other SACU producers' production			

- E6.2 Comment on the actual and potential decline in your production, both total and for SACU consumption.

MARKET SHARE

E7 Actual and potential decline in market share

- E7.1 Supply the following information, based on sales (and not on output) **volume**, for the past three years –

	Year 1	Year 2	Year 3
Market share in volume (<i>unit</i>):			

Applicant			
Dumped imports			
Other imports			
Total SACU market			
Percentage share held by:			
Applicant			
Dumped imports			
Other imports			

E7.2 Supply the following information, based on sales (and not on output) **value**, for the past four years:

	Year 1	Year 2	Year 3
Your market share (%)			
Other SACU producers' market share (%)			
Total SACU producers' market share (%)			
Market share of alleged dumped imports by country			
-			
-			
-			
Total market share of alleged dumped imports (%)			
Market share of other imports (%)			

E7.3 Comment on the trends revealed in Tables E7.1 and E7.2.

PRODUCTIVITY

E8 Actual and potential decline in productivity

E8.1 Provide the following information regarding productivity –

	Year 1	Year 2	Year 3
Total production volume			
Number of employees (manufacturing only)			
Units per employee			

- E8.2 Comment on the actual and potential decline in productivity identified in Table E8.1

RETURN ON INVESTMENT

E9 Return on investment

- E9.1 Supply the information requested below for the product concerned only. If this is not possible, clearly indicate in both your confidential and non-confidential submissions on what basis the return on investment was determined.

Please reflect the profit before tax, interest and extraordinary items.

	Year 1	Year 2	Year 3
Net profit (product concerned)			
Total net profit (all products)			
Net assets (product concerned)			
Total net assets (total)			
Return on net assets (product)			
Return on net assets (total)			

CAPACITY UTILISATION

E10 Actual and potential decline in capacity and capacity utilisation

- E10.1 Supply the information requested below regarding your actual and potential capacity and capacity utilisation for the product concerned. State the unit of measurement.

	Year 1	Year 2	Year 3
Your capacity (units)			
Your actual production			
Your capacity utilisation %			
Rest of SACU capacity			
Rest of SACU production			
Rest of SACU capacity utilisation %			

- E10.2 State the normal number of shifts per week, number of hours per shift and number of labour units involved, for each –

	Year 1	Year 2	Year 3

Your company			
Number of shifts			
Workers per shift			
Other SACU producers			
Number of shifts			
-			
-			
-			
Other SACU producers			
Workers per shift			
-			
-			
-			

E10.3 Comment on the trends revealed in Tables E10.1 and E10.2.

CASH FLOW

E11 Actual and negative effects on cash flow

E11.1 Provide the following information regarding your cash flow:

	Year 1	Year 2	Year 3
Product specific			
Cash flow: incoming			
Cash flow: outgoing			
Net cash flow			
Company			
Cash flow: incoming			
Cash flow: outgoing			
Net cash flow			

E11.2 Comment on your cash flow situation relating to the subject product.

INVENTORIES

E12 Actual and potential effect on inventories

E12.1 Supply the following information regarding your inventories for the subject product

	Year 1	Year 2	Year 3
Volume			
Value			

E12.2 Supply your inventories for the subject product on the same basis as in E12.1 for the last 12 calendar months as **Annexure E12.2**.

E12.3 Is the level of monthly inventories subject to fluctuation? If affirmative, please

elaborate.

E12.4 What is the effect of the change in your inventories over the injury investigation period?

EMPLOYMENT

E13 Actual and potential negative effect on employment

E13.1 Supply the following information regarding employment –

	Year 1	Year 2	Year 3
Direct labour units: production			
Indirect labour units: production			
Total labour units: production			
Labour units: Selling and Administrative			
Rest of SACU: Total labour units: production			

E13.2 Comment on the actual and potential negative effect on employment, including comments on the possibility of moving employees to other production areas, the minimum number of employees required to operate the machinery, etc.

WAGES AND SALARIES

E14 Actual and negative effects on wages and salaries

E14.1 Supply the following information regarding wages and salaries relating the subject product –

	Year 1	Year 2	Year 3
Total wages: Production			
Wages per employee			

* - Indicate the time period, e.g. per hour, day, week or month

E14.2 Comment on the wage rates, indicating factors that have led to increases or decreases.

GROWTH

E15 Actual and potential negative effect on growth

E15.1 Supply the following information:

	Year 1	Year 2	Year 3
Size of the SACU market			
% growth from previous year			
Your sales volume			

Your growth %			
Rest of SACU producers volume			
Rest of SACU growth %			
Alleged dumped imports			
Alleged dumped imports growth %			
Other imports			
Other imports growth %			

E15.2 Comment on the growth in the SACU market and factors affecting the growth.

CAPITAL AND INVESTMENT

E16 Ability to raise capital and investment

E16.1 Supply the following information regarding capital and investment –

	Year 1	Year 2	Year 3
Total capital/investment in subject product			
Capital expenditure during year on subject product			

E16.2 Comment on your ability to raise additional capital or investments for the like product and indicate whether such capital or investments would be internally sourced, provided by your parent company or be provided by an outside institution.

E17 OTHER INJURY INFORMATION

E17.1 Please indicate any other injury information to be considered by the Commission and not covered by the questions above.

PARAGRAPH F THREAT OF MATERIAL INJURY

Note: It is not necessary to complete this paragraph if you can prove actual material injury as contained in Paragraph E.

- F1 Where the applicant's situation does not show actual material injury, it may lodge a complaint for imposition of anti-dumping measures provided that the applicant successfully shows that such imports pose a real threat of causing material injury to it.
- F2 Give details on the freely disposable capacity or imminent substantial increase in capacity of the exporter.
- F3 Substantiate any significant increase of allegedly dumped imports into the SACU market indicating the likelihood of substantially increased importation.
- F4 State whether the products concerned enter the country at prices that will have a significant depressing or suppressing effect on SACU prices and are likely to increase demand for further imports. Substantiate your reply. (A depressing effect means the actual lowering of existing prices and a suppressing effect means the prevention of price increases which would have normally been affected.)
- F5 Indicate the **exporters'** inventories of the product being investigated.
- F6 Indicate the state of the economy of the country of origin/export and its influence on the operations of the manufacturers/exporters.
- F7 Give any other information relevant to your allegation that the infliction of material injury is imminent.

PARAGRAPH G CAUSE OF MATERIAL INJURY

Note: In order to justify action against the alleged dumping the Commission shall be satisfied that material injury is caused by the alleged dumping.

GENERAL

G1 Give the reasons for your belief that the alleged dumping is the cause of the alleged material injury or threat thereof.

IMPORTS

Volume of the dumped imports

1. In addition to providing the data establishing dumping and material injury on a *prima facie* basis, the applicant shall also demonstrate that there is a causal link between the alleged dumped imports and the claimed material injury suffered by the applicant or SACU industry. The applicant shall submit evidence that the material injury is caused by the dumping and not by other factors. It is therefore important to refer to matters such as the increase in imports of the alleged dumped product compared to decreases in your sales volumes, price undercutting by the alleged dumped product and other factors that can directly link injury to the alleged dumping.
2. An application will be rejected if the volume of dumped products is regarded as *de minimis* (negligible). 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.

Give the following information on the imports of the product, being the subject of the application, for the latest three calendar years and separately on a monthly basis for the period subsequently to the end of the last calendar year.

G2.1 Import volumes per annum (State unit of measurement)

	Year 1	Year 1%	Year 2	Year 2%	Year 3	Year 3%
Subject countries						
-						
--						
Subtotal						
Other countries						
Total						

Year%, etc – express the volume of imports from the different countries as a percentage of the total volume imports for the year.

G2.2 Import values per annum

	Year 1	Year 2	Year 3
Subject countries			
-			
-			
Subtotal			
Other countries			
Total			

G2.3 Import prices per unit

	Year 1	Year 2	Year 3
Subject countries			
-			
-			
Subtotal			
Other countries			
Total			

G2.4 If dumping is alleged against more than one country, state the reasons why you believe imports from the different countries may be cumulated.

G3 Monthly import statistics

G3.1 Import volumes per month

Attach as **Annexure G3.1** a table indicating in the same format as under paragraph G2.1, the monthly volumes of imports from the various countries for the last 12 consecutive months. If you believe that the statistics do not properly reflect the increasing trend in imports you may include the monthly import statistics for the last 18 consecutive months.

G3.2 Import values per month

Attach as **Annexure G3.2** a table indicating in the same format as under paragraph G2.2, the monthly volumes of imports from the various countries for

the last 12 consecutive months. If you believe that the statistics do not properly reflect the increasing trend in imports you may include the monthly import statistics for the last 18 consecutive months.

G3.3 Price per unit per month

Attach as **Annexure G3.3** a table indicating in the same format as under paragraph G2.3, the monthly volumes of imports from the various countries for the last 12 consecutive months. If you believe that the statistics do not properly reflect the increasing trend in imports you may include the monthly import statistics for the last 18 consecutive months.

G4 Own imports

G4.1 Provide the following information on your own imports of the product:

	Year 1	Year 2	Year 3
Volume imported from countries under investigation			
Volume imported from other countries			
Total volume imported			
Value imported from countries under investigation			
Value imported from other countries			
Total value imported			
Price per unit imported from countries under investigation			
Price per unit imported from other countries			
Total average price per unit imported			

G4.2 State your reasons for importing the product.

G4.3 List all your transactions over the injury investigation period in the following format (duplicate as required and attach as **Annex G4.3**):

	Shipment/file nr	Shipment/file nr
Invoice date DA 500 date DA500 number Volume (units)		
Invoice price (foreign currency) Invoice terms (FOB/CIF, etc) Exchange rate/forward cover rate		
Ex-factory price (BWP) Costs to FOB		

FOB price (BWP)		
Ocean freight		
Insurance		
CIF price (BWP)		
Customs duty		
Landing and clearing costs		
Landed costs		
Domestic transport		
In-store cost		
In-store cost per unit		

G5 Price undercutting

Price undercutting as the extent to which the price of the imported product is lower than the price of the SACU product. The price should be compared at the same level of trade and with the same terms of condition of trade, normally at the SACU ex-factory level compared to the landed cost of the imported product.

G5.1 Provide the following information as regards your selling price per unit and the landed cost per unit of the imported product during the POI (indicate separately for each country against which the allegation is lodged) –

(R/unit)	POI
Your ex-factory selling price	
Other SACU producers	
Landed cost of imports from	
-	
-	
Undercutting per unit-	
-	
-	
Undercutting %-	
-	
-	

Undercutting %: express the undercutting per unit as a percentage of your price. Indicate the level of trade and selling conditions of your product and of the imported product separately, i.e. ex-factory/delivered, payment terms, distributor/wholesaler/retailer.

G5.2 Comment on the trends indicated by this information and substantiate how this factor is indicative of material injury. (If the trends do not support your argument, you shall provide other substantiating evidence as proof.)

MARKET SHARE

G6 Supply the following information, based on sales (and not on output) **volume**, for the past three years (refer question E7.1) –

	Year 1	Year 2	Year 3
--	--------	--------	--------

Your market share (%)			
Other SACU producers' market share (%)			
Total SACU producers' market share (%)			
Market share of alleged dumped imports by country			
-			
-			
Total market share of alleged dumped imports (%)			
Market share of other imports (%)			

MAGNITUDE OF THE MARGIN OF DUMPING

G7 Indicate how the magnitude of the margin of dumping supports your allegation that dumping is causing material injury to the SACU industry.

PRICES OF UNDUMPED PRODUCTS AVAILABLE IN SACU

G8.1 Indicate the prices of undumped products available in the market and the effect thereof on SACU industry prices –

	Year 1	Year 2	Year 3
Your ex-factory selling price			
Landed cost of product imported from countries not alleged to be dumping			
Total SACU producers' market share (%)			
-			
-			
-			
-			

G8.2 *Anti-Dumping Regulations* defines unsuppressed selling price as “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;
- (b) the profit margins of the industry for the like products before the entry of the dumped imports;
- (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.”

State what your unsuppressed selling price is be at present.

OTHER FACTORS CAUSING INJURY

- G9.1 Indicate any contraction in demand for or changes in the patterns of consumption of the product under consideration over the past three years.
- G9.2 Indicate any trade restrictive trade practices of and competition between the foreign and SACU producers.
- G9.3 Indicate any recent developments in technology.
- G9.4 Indicate any other factors affecting the SACU prices.
- G9.5 Comment on the SACU industry’s export performance.
- G9.6 Comment on the productivity of the SACU industry vis-à-vis that of the exporting countries.
- G9.7 Have you had any strikes, go-slows or lock-outs during the past twelve calendar months? Please elaborate.
- G9.8 Indicate what the effect of the changing exchange rate has been on –
(a) your production cost;
(b) your selling price; and
(c) the price of the imported product.
- G9.9 Indicate any other factors that affecting your sales or your sales prices, including the state of the economy and the industry.

PARAGRAPH H PROVISIONAL ANTI-DUMPING DUTY

1. At any time after an investigation has been initiated, a provisional anti-dumping duty may be imposed where a preliminary recommendation, approved by the Commission's Board of Directors, has made an affirmative determination of dumping and the Board considered it necessary or expedient that provisional measures be taken to prevent further injury being caused while the investigations are being carried out.
2. Please indicate whether you are seeking the imposition of a provisional anti-dumping duty. If you are requesting the imposition of a provisional measure, explain why you consider the measure as a necessity.

PARAGRAPH I: GENERAL

Provide any other evidence you wish to bring to the attention of the Commission.

CERTIFICATION

The undersigned certifies that all information herein supplied in response to the questionnaire is complete and correct to the best of his/her knowledge and belief and understands that the information submitted may be subject to audit and verification by the Botswana Trade Commission. The undersigned has been authorised to represent (*company name*).

Date

Signature of authorised person

Name and title of authorised person (in print)

ANNEXURE A4.1

LETTER OF AUTHORISATION

Type the following letter on your company letterhead

To whom it may concern

We the undersigned, hereby authorise _____ to act on our behalf in all manners relating to this application, including signing all documents and being the point of contact.

Any and all acts carried out by the agent/representative on our behalf shall have the same effect as acts of our own.

Further details of the agent/representative are provided below –

Name: _____

Address: _____

Telephone No: _____

Fax No: _____

E-mail address: _____

This authorisation is valid for the entirety of the application and investigation process or until further notice from (your company name), whichever occurs first.

Yours sincerely

(duly authorised person)

(Name and Title)

ANNEXURE A4.2

POWER OF ATTORNEY

I, the undersigned, _____
 in my capacity as _____ do hereby nominate, constitute and appoint
 _____ with power of substitution, to be my lawful
 Agent/Representative in my name, place and stead to represent (company name) in the
 application for the initiation of an anti-dumping investigation concerning imports of
 _____.

And generally, for effecting the purposes aforesaid, to do or cause to be done whatsoever shall
 be requisite, as fully and effectually, for all intents and purposes, as might or could do if
 personally present and acting herein; hereby ratifying, allowing and confirming and promising
 and agreeing to ratify, allow and confirm all and whatsoever my/our said Agent/Representative
 shall lawfully do, or cause to be done, by virtue of these present.

SIGNED AT _____ THIS DAY OF 202_ IN THE
 PRESENCE OF THE UNDERSIGNED WITNESSES:

 (Name)

AS WITNESSES:

1.
2.

Cost and price build-up (See question E3.3.1) ANNEXURE E3.3.1

	Products under investigation	All other products	Company total cost
1. <u>DIRECT COST:</u>	_____	_____	_____

Materials and components# - Imported - Domestic Direct labour & related costs Re-tooling * Power & fuel Royalties, etc Variable overheads * Other *	<i>Separate cost analyses shall be provided for each of the subject products model/type in this format. Note that the cost data should reconcile to your company's income statement.</i>		
2. <u>FIXED OVERHEAD COST:</u> Indirect labour Repair & maintenance Rates & insurance R & D Plant depreciation Other *			
3. <u>TOTAL PRODUCTION COST:</u> 4. Operating profit			
5. <u>IN-STORE COST:</u> (3&4) 6. <u>SELLING, GENERAL & ADMINISTRATIVE EXPENSES:</u> Administrative expenses General expenses Selling expenses			
7. <u>TOTAL COST:</u> (5&6) 8. Mark-up			
9. <u>SELLING (LIST) PRICE</u> (7&8) 10. <u>DISCOUNTS, ETC:</u> Discounts Settlements discounts Rebates			
11. <u>NET EX-FACTORY PRICE</u> (9&10) 12. Distribution costs *			

13. NET DELIVERED PRICE (11&12)			
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- Supply a full Bill of materials, indicating the cost and volume of each material or component

* - Supply a detailed breakdown of the items.

Indicate the production volume on which the above cost and price build-ups are based.

This format serves as an indication of the details required by the Commission. However, you may use your own format, provided that the required amount of detail is submitted. This information should be reconcilable to your income statements. Provide a detailed breakdown of the basis of allocation in each case that an allocation has been made.

The cost and price build-ups should refer to the average costs for the 12-month period under investigation for dumping.

MADE this day of , 2024

MMUSI KGAFELA,
Minister of Trade and Industry.