

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 7199

6 March 2026

INTERNATIONAL TRADE ADMINISTRATION ACT, 2002

(ACT NO. 71 OF 2002)

INVITATION FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS

TO THE INTERNATIONAL TRADE ADMINISTRATION ACT, 2002

I, Mpho Parks Tau, MP, Minister of Trade, Industry and Competition, hereby publish for public comment proposed amendments to the International Trade Administration Act, 2002 (Act No. 71 of 2002).

The proposed amendments seek to refine, update and strengthen the legislative framework governing the investigative, administrative and enforcement functions of the International Trade Administration Commission of South Africa (the Commission). The amendments take into account the Commission's operational experience, developments in international trade practice, and the need to enhance the effective administration of the Act. The proposed amendments include, amongst others, targeted changes grouped around the following key themes:

1. International trade-related measures

The proposed amendments introduce new provisions enabling the Commission, upon direction of the Minister, to investigate imports that may adversely affect the national security interests of the Republic. Additional provisions empower the Commission, upon Ministerial direction, to investigate discriminatory or unreasonable foreign trade practices that adversely affect South Africa's trade or economic interests.

2. Improvements to the investigative framework

Several amendments enhance the Commission's investigative and decision-making processes. These include provisions allowing for the consolidation of related applications or matters; the express consideration of public-interest factors in investigations; a clearer statutory framework governing reciprocal commitments by applicants; and authority for the Minister to suspend the imposition of duties where appropriate.

3. Enhanced enforcement and compliance mechanisms

The proposed amendments strengthen the Commission's enforcement powers by clarifying authority relating to entry, search and inspection, including procedures for handling confidential information. New provisions provide for the disposal of seized

goods where criminal proceedings are not instituted. An administrative penalty regime is introduced for specified contraventions, and criminal offences relating to illegal trade, falsified documentation and interference with investigations are expanded and clarified.

4. Administrative and technical refinements

Finally, the proposed amendments modernise and clarify various administrative provisions of the Act. These include refinements to the Commission's powers relating to permits, certificates, rebates and drawbacks; enhanced verification powers; and clarification of the circumstances under which permits and certificates may be amended, suspended or cancelled. These changes address operational challenges and improve the clarity and effective administration of the Act.

Interested persons are invited to submit written comments on the proposed amendments which must be submitted within four (4) weeks of the date of publication of this notice in the Government Gazette.

Written comments must be submitted by e-mail, clearly marked "Comments on Proposed Amendments to the International Trade Administration Act, 2002" in the subject line, and addressed to:

Mr Alexander Amrein
Senior Manager: Policy and Research
International Trade Administration Commission of South Africa
E-mail: aamrein@itac.org.za

The proposed amendments to the International Trade Administration Act, 2002, are published together with this notice and may also be obtained electronically upon request at the e-mail address provided above.



MR M. PARKS TAU, MP
MINISTER OF TRADE, INDUSTRY AND COMPETITION

INTERNATIONAL TRADE ADMINISTRATION ACT 71 OF 2002

(English text signed by the President)

[Assented to: 30 December 2002]

[Commencement date: 1 June 2003 – unless otherwise indicated]

ACT

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

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

TABLE OF CONTENTS

CHAPTER 1

DEFINITIONS, INTERPRETATION, OBJECT AND APPLICATION OF ACT

1. Definitions and interpretation
2. Object of Act
3. Application of Act

CHAPTER 2

TRADE POLICY

4. Implementation of SACU Agreement
5. Trade policy statements and directives
6. Minister's power to regulate imports and exports
- 6A. Minister's power to regulate imports for the protection of the Republic's national security interests

CHAPTER 3

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

Part A

Establishment and constitution

7. Establishment and independence of Commission
8. Constitution of Commission

9. Qualifications of members
10. Conduct of members
11. Resignation and removal from office
12. Meetings and decisions of Commission
13. Chief Commissioner
14. Committees

**Part B
Functions of Commission**

15. General functions of Commission
16. Ordinary customs duties, rebate and drawback provisions, anti-dumping duties, countervailing duties and safeguard measures
- 16A. Suspension of duties
- 16B. Reconsideration upon referral by Minister
17. Issuing of permits or certificates
18. Monitoring trade and other matters
- 18A. Action in response to foreign trade practices affecting the Republic
19. Information sharing with SACU institutions and Member States
20. Relations with SACU and Member States
21. Relations with domestic agencies
22. Public information and reporting

**Part C
Staff, finances and administration of Commission**

23. Staff of Commission
24. Finances of Commission
25. Liability

**CHAPTER 4
INVESTIGATION, EVALUATION AND ADJUDICATION PROCEDURES**

**Part A
Applications**

26. Applications

**Part B
Import and export control permits and rebate and drawback permits and certificates and trade information**

27. Authority of Commission to issue import and export permits and rebate and drawback permits and certificates
28. Authority of Commission to demand trade information
29. Authority of Commission to suspend, cancel or amend permits and certificates

**Part C
Customs duty applications**

- 30. Customs duty applications
- 31. Requests
- 32. Consideration of alleged dumping and subsidised exports

Part D
Confidential information

- 33. Right to claim confidentiality
- 33A. Applicability
- 34. Determination by Commission
- 35. Proceedings in contested claims
- 36. Disclosure of information
- 37. Restricted use of information

Part E
Powers of investigative search and inspections

- 38. Appointment of investigating officers
- 39. Summons
- 40. Witnesses
- 41. Inspections
- 42. Conduct of entry and search
- 43. Power to enter and search under warrant
- 44. Power to enter and search without warrant
- 45. Power to enter and search
- 45A. Disposal of article where no criminal proceedings are instituted or where the article is not required for criminal proceedings

Part F
Reviews and appeals

- 46. Reviews
- 47. Appeals

CHAPTER 5
ENFORCEMENT AND OFFENCES

- 48. Variation of order
- 49. Standard of proof
- 49A. Administrative penalties
- 50. Breach of confidence
- 51. Hindering administration of Act
- 52. Failure to attend when summoned
- 53. Failure to answer fully or truthfully
- 54. Other offences
- 55. Penalties
- 56. Magistrate's Court jurisdiction to impose penalties
- 57. Serving of documents

58. Proof of facts

**CHAPTER 6
GENERAL PROVISIONS**

59. Regulations
60. Guidelines
61. Official seal
62. Act binds State
63. Transitional arrangements and repeal of laws
64. Short title and commencement

**SCHEDULE 1
SACU AGREEMENT**

**SCHEDULE 2
TRANSITIONAL PROVISIONS**

1. Definitions
2. Implementation of SACU Agreement
3. Composition of Commission
4. Pending applications and other Board business
5. Statutory references
6. Status of Board Employees and others

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

CHAPTER 1

DEFINITIONS, INTERPRETATION, OBJECT AND APPLICATION OF ACT

1. Definitions and interpretation

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

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

“**amendment**” means, depending on the context, the imposition, termination or other modification of a duty;

“**anti-dumping duty**” means a customs duty imposed in response to dumping;

“**Cabinet**” means the body referred to in section 91 of the Constitution;

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

“**Commission**” means the International Trade Administration Commission established by section 7;

“**committee**” means a committee of the Commission;

“**Common Customs Area**” means the combined areas of the Member States of SACU;

“**Competition Act**” means the Competition Act, 1998 (Act No. 89 of 1998).

“**confidential information**” means information that is –

(a) by nature, confidential; or

(b) recognised in terms of Part D of Chapter 4, to be otherwise confidential;

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

“**Customs and Excise Act**” means the Customs and Excise Act, 1964 (Act No. 91 of 1964);

“**customs duty**” means any duty leviable on imported goods under Part 1 of Schedule No. 1 or Schedule No. 2 to the Customs and Excise Act;

“disruptive competition” means goods being imported into the Republic or the Common Customs Area in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic producers in the Republic or the Common Customs Area of like or directly competitive products;

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

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

“goods” includes –

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

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

“information that is by nature confidential” means trade, business or industrial information that –

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

“member” means a member of the Commission;

“Member State” means a member of SACU;

“Minister” means the member of the Cabinet responsible for trade, industry and competition;

“**Minister of Finance**” means the member of the Cabinet responsible for national finance;

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

“**organ of state**” has the meaning set out in section 239 of the Constitution;

“**person**” includes, among other things, a trust;

“**premises**” includes land or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“**prescribed**” means prescribed by regulation in terms of this Act;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**regulation**” means a regulation made under this Act;

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

“**Republic**” means the Republic of South Africa;

“**SACU**” means the Southern African Customs Union established by Article 3;

“**SACU Agreement**” means –

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

“**SACU Commission**” means the Customs Union Commission established by Article 7;

“**SACU Council**” means the Council of Ministers established by Article 7;

“**SACU Tribunal**” means the Tribunal established by Article 7;

“**safeguard measure**” means a customs duty or a quantitative restriction, or a combination of both, imposed in response to disruptive competition;

“**subsidised imports**” means goods imported into the Republic or the Common Customs Area that benefit from a subsidy;

“**Tariff Board**” means the SACU Tariff Board established by Article 7; and

“**this Act**” includes the regulations and Schedules, other than Schedule 1.

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

2. Object of Act

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

3. Application of Act

- (1) Subject to subsection (2), this Act applies to all economic activity within, or having an effect within, the Republic.
- (a) Sections 6, 26(1)(a) and 26(2)(a) and Part B of Chapter 4 do not apply to the export or import of goods in respect of which a permit may be issued in terms of section 13 of the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002), as amended.

CHAPTER 2

TRADE POLICY

4. Implementation of SACU Agreement

- (1) The Minister is the head representative of the Republic to the SACU Council.
- (2) The Minister may –
- (a) assign representatives of the Republic to any institution constituted by or in terms of the SACU Agreement; and

CONTINUES ON PAGE 130 OF BOOK 2

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 729

6

March
Maart

2026

No. 54268

PART 2 OF 2

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5845



5 4 2 6 8



9 771682 584003



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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

5. Trade policy statements and directives

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

6. Minister's power to regulate imports and exports

- (1) The Minister may, by notice in the *Gazette*, prescribe that no goods of a specified class or kind, or no goods other than goods of a specified class or kind, may be –
 - (a) imported into the Republic;

- (b) imported into the Republic, except under the authority of and in accordance with the conditions stated in a permit issued by the Commission;
 - (c) exported from the Republic; or
 - (d) exported from the Republic, except under the authority of and in accordance with the conditions stated in a permit issued by the Commission.
- (2) For the purpose of subsection (1) goods may be classified according to –
- (a) their source or origin;
 - (b) their intermediate or final destination;
 - (c) the channels along which they are transported;
 - (d) the manner in which they are imported or exported;
 - (e) the purposes for which they are intended to be used;
 - (f) the methods or processes by which they are produced;
 - (g) the use of non-renewable natural resources in their production, and their life-cycle impact on the natural environment; or
 - (h) any other classification methods determined by the Minister.
- (3) A notice issued in terms of this section applies to any person who, at the time of the import of particular goods into the Republic, or the export of particular goods from the Republic –
- (a) owns those goods;
 - (b) carries the risk of those goods;
 - (c) takes or attempts to bring those goods into, or takes or attempts to take those goods from, the Republic;
 - (d) in any manner whatsoever has a beneficial interest in those goods;
 - (e) acts on behalf of a person referred to in paragraph (a), (b), (c) or (d);
or

- (f) pretends to be a person referred to in paragraph (a), (b), (c), (d) or (e).
- (4) Despite any other provision of this Act, a notice issued in terms of this section in respect of goods that are the subject of a permit issued in terms of section 13 of the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002) is deemed to have been revoked as from the date of the permit.

6A Minister's power to regulate imports for the protection of the Republic's national security interests

- (1) Upon the direction of Cabinet, the Minister shall instruct the Commission to conduct an investigation to determine if the importation of goods, in terms of their quantities or circumstances, is having, or is likely to have, an adverse effect on the national security interests of the Republic.
- (2) The Commission shall publish a notice of initiation of an investigation in terms of subsection (1) in the Government Gazette and shall provide notice thereof to the Minister, the Minister of Defence and to such other officials as deemed appropriate.
- (3) In its investigation, which shall be conducted in an expedited manner, the Commission shall take into account all relevant factors affecting the national security interests of the Republic, which interests include, but are not limited to –
 - (a) the Republic's defence capabilities and interests;
 - (b) the domestic industry's capacity to meet the requirements identified in paragraph (a);
 - (c) the economic and social stability of the Republic;
 - (d) the security of infrastructure, including processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of citizens or the effective functioning of the Government of the Republic;
 - (e) the ability of the domestic industry to supply important goods or services to the citizens of the Republic or the Government of the Republic; and
 - (f) the displacement of domestic products by imports and the effect thereof on domestic investment and employment.
- (4) In assessing the factors listed in subsection (3), the Commission shall have regard to the prevailing national security strategy and policies of Government, to the extent that such strategy and policies relate to the matter being investigated.

- (5) In the course of any investigation conducted in terms of subsection (3), the Commission shall, as appropriate –
- (a) consult with the Minister of Defence regarding the assessment of defence requirements;
 - (b) seek, where relevant, information and advice from other government departments; and
 - (c) hold public hearings or otherwise afford interested parties an opportunity to present information.
- (6) The Commission's determination on whether the volume or circumstances of imports are having, or are likely to have, an adverse impact upon the national security interests of the Republic shall be forwarded to the Minister in the form of a report and recommendations. The Minister may accept, reject or refer back the Commission's report and recommendations.
- (7) The Minister shall inform Cabinet of the Commission's report and recommendations.
- (8) If, having considered the Commission's report and recommendations and any other relevant factors, the Minister determines that imports are having, or are likely to have, an adverse impact on the national security interests of the Republic, the Minister may in relation to the imports which were the subject of the Commission's investigation:
- (a) exercise his authority in terms of section 6; and/or
 - (b) take any other action in terms of this Act or any other applicable law to remedy the adverse impact, or the likely adverse impact, on the national security interests of the Republic of the imports investigated by the Commission.

CHAPTER 3

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

Part A

Establishment and constitution

7. Establishment and independence of Commission

- (1) The International Trade Administration Commission is hereby established, and –
- (a) has jurisdiction throughout the Republic;
 - (b) is a juristic person; and

- (c) must exercise its functions in accordance with this Act and any other relevant law.
- (2) The Commission –
- (a) is independent and subject only to –
 - (i) the Constitution and the law;
 - (ii) any Trade Policy Statement or Directive issued by the Minister in terms of section 5; and
 - (iii) any notice issued by the Minister in terms of section 6; and
 - (b) must be impartial and must perform its functions without fear, favour or prejudice.
- (3) Each organ of state must assist the Commission to maintain its independence and impartiality, and to exercise its authority and carry out its functions effectively.
(Commencement date of s. 7: 21 February 2003)

8. Constitution of Commission

- (1) (a) The Commission consists of –
- (i) a full-time Chief Commissioner and a full-time Deputy Chief Commissioner; and
 - (ii) not less than two but not more than 10 other Commissioners, each appointed to serve either full-time or part-time;
- appointed by the President on the recommendation of the Minister, subject to section 9.
- (b) The Minister must, by notice in the *Gazette* and in any national newspaper, invite nominations for appointment of persons as members of the Commission.
 - (c) The members of the Commission must, when viewed collectively, be representative of a broad cross-section of the population of the Republic, including women, and the President must endeavour to ensure participation by significant economic sectors.
- (2) The President must, when making an appointment in terms of subsection (1)(a)(ii), determine –

- (a) whether the appointee is to be a full-time or part-time Commissioner;
and
 - (b) the term of the appointment, which may not exceed five years.
- (3) If a vacancy arises as a result of the departure of a full-time Commissioner, the President may, on the recommendation of the Minister –
- (a) leave the position vacant;
 - (b) if the member's term of office has expired, reappoint that member subject to section 9; or
 - (c) in any other case –
 - (i) appoint a new member in accordance with subsection (2); or
 - (ii) on the request of a part-time member, transfer that part-time member to fill that vacancy on a full-time basis either for –
 - (aa) the remainder of that member's term of office; or
 - (bb) a term determined by the President in accordance with subsection (2).
- (4) If a vacancy arises as a result of the departure of a part-time Commissioner, the President may, on the recommendation of the Minister –
- (a) leave the position vacant;
 - (b) if the member's term of office has expired, reappoint that member subject to section 9; or
 - (c) in any other case –
 - (i) appoint a new member on a part-time basis in accordance with subsection (2); or
 - (ii) on the request of a full-time member, transfer that member to fill that vacancy on a part-time basis either for –
 - (aa) the remainder of that member's term of office; or
 - (bb) a term determined by the President in accordance with subsection (2).
- (5) A person may not serve as Chief Commissioner for more than 10 consecutive years.

- (6) The Minister must, with the concurrence of the Minister of Finance, determine the remuneration, allowances, benefits and other terms and conditions of employment of the Chief Commissioner, Deputy Chief Commissioner and each other member of the Commission.
- (7) During the term of office of a member of the Commission, the Minister may not reduce the member's salary, allowances or benefits.
- (8) The Minister may determine any other conditions of appointment not provided for in this section, but any such conditions may not be of such a nature as to reduce the independence of the Commissioner concerned.
(Commencement date of s. 8: 21 February 2003)

9. Qualifications of members

- (1) To be eligible for appointment and to continue to hold office as a member of the Commission, a person must –
 - (a) be ordinarily resident in the Republic; and
 - (b) have suitable qualifications and experience in economics, accounting, law, commerce, agriculture, industry or public affairs.
- (2) A person may not be a member of the Commission if that person –
 - (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
 - (b) is an unrehabilitated insolvent;
 - (c) has been found mentally unfit by an order of a competent court; or
 - (d) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.
(Commencement date of s. 9: 21 February 2003)

10. Conduct of members

- (1) A member of the Commission, and a member of the staff of the Commission, must not –
 - (a) engage in any activity that may undermine the integrity of the Commission;
 - (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a financial interest or any similar personal interest, as prescribed;
 - (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or
 - (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Commission.
- (2) If, at any time, it appears to a member of the Commission that a matter before the Commission concerns the financial or personal interest of that member, as prescribed, the member of the Commission must –
 - (a) immediately and fully disclose the interest to the Chief Commissioner, or in the case of the Chief Commissioner, to the Deputy Chief Commissioner; and
 - (b) withdraw from any further involvement in the matter to the extent required by regulation.
- (3) A member of the Commission must comply with any prescribed code of conduct for members.
(Commencement date of s. 10: 21 February 2003)

11. Resignation and removal from office

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

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

12. Meetings and decisions of Commission

- (1) The Chief Commissioner must convene the first meeting of the Commission and preside at that meeting.
- (2) A majority of the members of the Commission present at a meeting of the Commission forms a quorum.
- (3) The Chief Commissioner must appoint a member of the Commission as Chairperson to preside at meetings of the Commission.
- (4) If the Chairperson is not present, the members present at the meeting must nominate a member to preside at that meeting.
- (5) A decision taken by a majority of the members of the Commission present and voting at a meeting, or a decision adopted by a majority of the members by written or electronic round-robin resolution, is a decision of the Commission and has the same force and effect as if it had been taken at a meeting of the Commission.
- (6) In the case of an equality of votes, the person presiding at the meeting may cast a deciding vote in addition to his or her deliberative vote.
- (7) The Commission may make rules of order for its proceedings, but any such rules of order must be consistent with this Act.

13. Chief Commissioner

- (1) The Chief Commissioner is the Chief Executive Officer of the Commission, is responsible for the general administration of the Commission, and must –
 - (a) perform the functions that are conferred on the Chief Commissioner by or in terms of this Act;
 - (b) manage and direct the activities of the Commission; and
 - (c) supervise the staff of the Commission.
- (2) The Deputy Chief Commissioner –
 - (a) may perform any functions of the Chief Commissioner as assigned by the Chief Commissioner; and
 - (b) must perform the functions of the Chief Commissioner whenever the –
 - (i) Chief Commissioner is unable for any reason to perform the functions of the Chief Commissioner; or
 - (ii) office of Chief Commissioner is vacant.
- (3) The Chief Commissioner may assign another member of the Commission to perform any functions of the Chief Commissioner when the Chief Commissioner or the Deputy Chief Commissioner is unable to perform those functions.

(Commencement date of s. 13: 21 February 2003)

14. Committees

- (1) The Minister may, by notice in the *Gazette* and at the request of the Commission –
 - (a) establish one or more committees of the Commission for any purpose within or ancillary to the functions of the Commission; and
 - (b) appoint persons recommended by the Commission to be members of a committee.
- (2) A request to the Minister contemplated in subsection (1) to establish a committee must –
 - (a) propose specific terms of reference for the committee;
 - (b) indicate whether the committee is a permanent committee or is established for a specific term;

- (c) propose persons to be appointed to the committee and designate the proposed chairperson of the committee; and
 - (d) set out time limits within which the committee must report to the Commission.
- (3) A committee may consist of persons who are not members of the Commission but-
- (a) at least half of the members of each committee must be members of the Commission; and
 - (b) persons who are not members of the Commission may not vote.
- (4) If a committee is permanent, the Minister must determine the term of office for each person appointed to that committee.
- (5) A committee decision is effective only if the decision is subsequently ratified by the Commission, unless the notice establishing the committee expressly authorises the particular decision to be effective without such ratification.

Part B

Functions of Commission

15. General functions of Commission

- (1) The Commission must carry out the functions assigned to it in terms of this Act, any other Act or by the Minister.
- (2) The Commission must carry out any function that arises out of an obligation of the Republic in terms of a trade agreement, if the Minister has assigned that function to the Commission.
- (3) The Commission may, to the extent required or permitted by the SACU Agreement, refer matters to any institution constituted by or in terms of the SACU Agreement, and may appear before such an institution.
(Commencement date of sub-s. (3): To be proclaimed)
- (4) The Commission may, subject to section 14(5), assign any of its functions to—
 - (a) a member of the Commission;
 - (b) a committee established in terms of section 14;
 - (c) a member of the staff of the Commission;
 - (d) a person referred to in section 23; or

- (e) any combination of persons referred to in this subsection.

16. Ordinary customs duties, rebates and drawbacks, anti-dumping duties, countervailing duties and safeguard measures

- (1) The Commission must investigate and evaluate –
- (a) applications in terms of section 26(1)(c);
 - (b) applications in terms of section 26(1)(cA);
 - (c) applications in terms of section 26(1)(cB); and
 - (cA) applications in terms of section 26(1)(d); and
 - (d) matters with regard to disruptive competition, dumping, subsidised imports, the amendment of ordinary customs duties, rebates or drawbacks in the Republic or the Common Customs Area that the –
 - (i) Minister directs the Commission to consider; or
 - (ii) Commission considers on its own initiative.
- (1A) The Commission may, where two or more applications or matters referred to in subsection (1) concern substantially the same goods, facts or parties, consolidate such applications or matters and conduct a single investigation, if doing so would promote the efficient administration of this Act.
- (1B) A consolidated investigation in terms of subsection (1A) shall be conducted in accordance with the procedures applicable to the investigations concerned, read with the changes required by the context.
- (2) Sections 26 and 30(1)(a), each read with the changes required by the context, apply to an investigation undertaken by the Commission in terms of subsection (1)(d).
- (3) The Commission may, after evaluating a matter in terms of subsection (1), take appropriate steps in accordance with this Act and the SACU Agreement and inform the Minister and the Tariff Board of its evaluation.
(Commencement date of sub-s. (3): To be proclaimed)
- (4) The Commission may, in the course of an investigation or review in terms of subsection (1), consider the public interest, including, but not limited to, the impact of the measure under consideration on the domestic industry, consumers and downstream users.
- (5) The Commission may, in connection with an investigation or review in terms of subsection (1), require applicants to submit commitments on performance targets, such as output, employment, investments and prices.

- (6) The Commission may, when conducting an investigation in terms of subsection (1)(a), (1)(c), (1)(cA) or (1)(d), request the Commissioner for the South African Revenue Service to impose a provisional payment contemplated in Chapter VI of the Customs and Excise Act.

16A. Suspension of duties

If, after considering the Commission's recommendation in an investigation conducted in terms of subsection (1), the Minister is satisfied that the imposition of a duty or any other measure provided for in this Act would adversely affect the public interest or prejudice the trade or economic interests of the Republic or SACU, the Minister may request the Minister of Finance to suspend, in whole or in part, the imposition of that duty.

16B. Reconsideration upon referral by Minister

Where the Minister refers a recommendation back to the Commission –

- (a) the Commission may reconsider the matter and may receive and consider additional relevant information relating to the issues identified by the Minister, provided that affected interested parties are afforded a reasonable opportunity to make representations;
- (b) after having reconsidered the matter, the Commission shall submit a further report or minute and recommendation to the Minister.

17. Issuing of permits or certificates

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

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

18. Monitoring trade and other matters

The Commission –

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

18A. Action in response to foreign trade practices affecting the Republic

- (1) The Minister may direct the Commission to investigate any trade-related measure, practice or policy of a foreign country where there is reason to believe that such measure, practice or policy –

- (a) breaches an international trade agreement to which the Republic is a party, violates other international trade-related obligations towards the Republic or constitutes a denial of fair and equitable treatment to the Republic; and
 - (b) adversely affects the trade or economic interests of the Republic.
- (2) Upon completion of an investigation, the Commission shall submit a report and recommendations to the Minister.
 - (3) If the Commission finds that a measure, practice or policy referred to in subsection (1) adversely affects the trade or economic interests of the Republic, it may recommend that the Minister take any measure authorised by this Act to safeguard the trade or economic interests of the Republic.
 - (4) The Minister may, having considered the Commission's report and any recommendations, subject to this Act, the SACU Agreement and the Republic's international obligations, take any appropriate measure to address the matter.
 - (5) The Commission may, on its own initiative or at the request of the Minister, review any measure taken under this section and may recommend its amendment or withdrawal to the Minister if the underlying circumstances that gave rise to the investigation materially change or the foreign country remedies the conduct giving rise to the imposition of a measure.

19. Information sharing with SACU institutions and Member States

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

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

(Commencement date of s. 19: To be proclaimed)

20. Relations with SACU and Member States

The Commission may –

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

- (i) engage with an entity of SACU or the National Body of any Member State in staff exchanges or secondment of staff; or
 - (ii) provide technical assistance or expertise to, or request such assistance from, an entity of SACU or the National Body of a Member State.
- (Commencement date of s. 20: To be proclaimed)

21. Relations with domestic agencies

- (1) The Commission may –
 - (a) enter into an agreement with any regulatory authority or organ of state to co-ordinate and harmonise their respective functions with regard to international trade matters, in order to ensure the achievement of the objects of this Act; and
 - (b) with regard to a particular matter within its jurisdiction –
 - (i) delegate its functions to such a regulatory authority or organ of state, as contemplated in section 238 of the Constitution; or
 - (ii) act in accordance with the agreement referred to in paragraph (a).
- (2) A regulatory authority or organ of state that, in terms of any law, has jurisdiction over international trade matters may –
 - (a) enter into an agreement referred to in subsection (1), with the Commission; and
 - (b) with regard to a particular matter within its jurisdiction –
 - (i) delegate such matter to the Commission as contemplated in section 238 of the Constitution; or
 - (ii) act in accordance with the agreement referred to in paragraph (a).
- (3) The Commission may –
 - (a) participate in the proceedings of any regulatory authority or organ of state; and
 - (b) advise, and receive advice from, any regulatory authority or organ of state.

22. Public information and reporting

- (1) The Commission –
 - (a) must implement measures to promote public awareness of the provisions of this Act; and
 - (b) may provide advice to industry or interested persons in the prescribed manner and form.
- (2) The Commission must report to the Minister on –
 - (a) any matter relating generally to the implementation of the objects of this Act; and
 - (b) the results of any investigation, monitoring or review carried out in terms of section 18.
- (3) The Chief Commissioner must within six months after the end of the financial year of the Commission, prepare and submit to the Minister an annual report in the prescribed form, containing –
 - (a) the audited financial statements prepared in terms of section 24(8);
 - (b) the auditor-general's report, prepared in terms of section 24(9);
 - (c) a report on the performance of the Commission and of activities undertaken in terms of this Act; and
 - (d) any other information that the Minister may require.
- (4) The Minister must table the annual report in Parliament within 14 days of receipt thereof if Parliament is sitting or, if Parliament is not then sitting, within 14 days of the commencement of the next sitting.
- (5) The Minister may table in Parliament any other report submitted regarding–
 - (a) a statement of the progress achieved during the preceding year towards realisation of the objects of this Act; and
 - (b) any other information determined by the Minister.

Part C

Staff, finances and administration of Commission

23. Staff of Commission

- (1) The Chief Commissioner may –

- (a) appoint staff or enter into contracts with other persons to assist the Commission in carrying out its functions; and
 - (b) in consultation with the Minister and with the concurrence of the Minister of Finance, determine the remuneration, allowances, benefits and other terms and conditions of appointment of each member of the staff, all of which shall be aligned with the conditions of service set forth by the Department of Public Service and Administration in its circulars and other publications.
- (2) The Minister may, with the concurrence of the Minister of Finance, determine the remuneration paid to a person who is appointed in terms of subsection (1), but who is not in the full-time service of the Commission.
(Commencement date of s. 23: 21 February 2003)
- (3) The Chief Commissioner, the Deputy Chief Commissioner and any other Commissioner appointed on a full-time basis shall be deemed to be part of the staff of the Commission. The remuneration, allowances, benefits and other terms and conditions of employment of the Chief Commissioner, Deputy Chief Commissioner and any other full-time Commissioner will be determined as provided for in section 8(6).

24. Finances of Commission

- (1) The Commission is financed from –
 - (a) money that is appropriated by Parliament;
 - (b) prescribed fees;
 - (c) income derived from the investment and deposit of surplus money in terms of subsection (6); and
 - (d) money received from any other source.
- (2) The financial year of the Commission is the period from 1 April in any year to 31 March in the following year, except that the first financial year begins on the date that this Act comes into operation, and ends on 31 March next following that date.
- (3) Each year, at a time determined by the Minister, the Commission must submit to the Minister a statement of its estimated income and expenditure, and the requested appropriation from Parliament, in respect of the next ensuing financial year.
- (4) The Commission must open and maintain an account in its name with a registered bank, or other registered financial institution, in the Republic, and –

- (a) deposit any money received into that account; and
 - (b) every payment made on its behalf must be made from that account.
- (5) Cheques drawn on the account of the Commission must be signed on its behalf by two persons authorised for that purpose by a resolution of the Commission.
- (6) The Commission may invest or deposit money that is not immediately required for contingencies or to meet current expenditure in-
- (a) a call or short-term fixed deposit account with any registered bank or financial institution in the Republic; or
 - (b) an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (7) The Chief Commissioner is the accounting authority of the Commission in terms of the Public Finance Management Act.
- (8) The Chief Commissioner must prepare financial statements for the Commission within six months after the end of each financial year in accordance with established accounting practice, principles and procedures, consisting of –
- (a) a statement reflecting, with sufficient particulars, the income and expenditure of the Commission during the preceding financial year; and
 - (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.
- (9) The Auditor-General, or a party appointed by the same, must each year audit the financial records of the Commission.
(Commencement date of s. 24: 21 February 2003)

25. Liability

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

CHAPTER 4

INVESTIGATION, EVALUATION AND ADJUDICATION PROCEDURES

Part A

Applications

26. Applications

- (1) A person may, in the prescribed manner and form, apply to the Commission for –
 - (a) an import or export control permit, or an amendment of such a permit, in terms of Part B of this Chapter and the regulations;
 - (b) a rebate or drawback permit or certificate, or an amendment of such a permit or certificate, in terms of the Customs and Excise Act;
 - (c) the amendment of ordinary customs duties in respect of goods imported into the Republic or the Common Customs Area;
 - (cA) the amendment of rebate or drawback provisions under the Customs and Excise Act applicable within the Republic or the Common Customs Area;
 - (cB) the amendment of customs duties in the Republic or the Common Customs Area with regard to anti-dumping duties, countervailing duties or safeguard duties; or
 - (d) the amendment of safeguard measures other than a customs duty amendment in the Republic or the Common Customs Area.
- (2) The Commission must, subject to section 30(1) and (2), evaluate the merits of every application received by it and dispose of each application –
 - (a) received in terms of subsection (1)(a) or (b), in accordance with Part B of this Chapter; or
 - (b) received in terms of subsection (1)(c), (cA), (cB) or (d), in accordance with Part C of this Chapter, where applicable.
- (3)
 - (a) The Commission may, before considering an application, give notice of the application in the *Gazette*.
 - (b) If it does so, the Commission must –
 - (i) allow interested parties the prescribed time to make written representations concerning the application; and

- (ii) ensure that notice of its decision or recommendation in the matter is subsequently published in the *Gazette*.
- (4) The Commission may –
 - (a) require an applicant to provide additional information in respect of the application;
 - (b) request further information from any person who makes a representation in terms of subsection (3)(b); or
 - (c) enter and inspect any place or premises to obtain or verify any information related to an application in terms of subsection (1).
- (5) Any person may voluntarily file with the Commission any document, affidavit or statement of the views of that person with regard to the application, or other relevant information.
- (6) The Commission may, after affording affected parties a reasonable opportunity to make representations, on its own initiative or on application by an interested party, amend or revoke a decision, determination, agreement or recommendation concerning an application if it finds that –
 - (a) the decision, determination, agreement or recommendation was based on materially incorrect or misleading information and the applicant or supplier of the information –
 - (i) was responsible for the error in the information; and
 - (ii) benefited or could have benefited, from the decision, determination, agreement or recommendation;
 - (b) the decision, determination, agreement or recommendation was obtained by deceit, misrepresentation or the failure to disclose material facts;
 - (c) a person has breached an obligation, condition or undertaking attached to the decision, determination, agreement or recommendation; or
 - (d) there has been a material change in the circumstances that gave rise to the decision, determination, agreement or recommendation, which renders it necessary to reconsider the matter.
- (7) If the Commission decides to amend a recommendation made to the Minister, it shall forward a minute setting out the reasons for its decision to the Minister, who may accept, reject or refer back the Commission's amended recommendation.

- (8) If the Minister accepts the Commission's recommendation in terms of subsection (7), the Minister may request the Minister of Finance to amend the relevant schedule to the Customs and Excise Act.

Part B

Import and export control permits and rebate and drawback permits and certificates and trade information

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

- (1) (a) The Commission must, after evaluating an application made in terms of section 26(1) (a) or (b) –
- (i) refuse the application; or
 - (ii) approve the application in whole or in part and with or without conditions.
- (b) If it approves the application, the Commission must take appropriate steps to give effect to its decision in accordance with this Act or the Customs and Excise Act.
- (2) A permit or certificate issued under subsection (1) may, with regard to the goods in question, prescribe-
- (a) the quantity or value of goods which may be imported or exported;
 - (b) the price at which the goods may be imported or exported;
 - (c) the period during which the goods may be imported or exported;
 - (d) the port through or from which the goods may be imported or exported;
 - (e) the country or territory from or to which the goods may be imported or exported;
 - (f) the manner in which the goods may be imported or exported;
 - (g) conditions relating to the possession, ownership or disposal of the goods after they have been imported, or the use to which they may be put; or
 - (h) any other related conditions.
- (2A) The Commission may, after issuing a permit or certificate in terms of subsection (1), enter and inspect any place or premises to obtain or verify any information related to that permit or certificate.

- (3) Despite any other provision of this Act, a permit issued in terms of this section with regard to goods that are the subject of a permit issued in terms of section 13 of the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002), as amended, is deemed to have been revoked as of the date of that permit.

28. Authority of Commission to demand trade information

- (1) The Commission may, in writing, direct a person who –
- (a) imports, exports, trades or manufactures any goods;
 - (b) in the course of whose or its business or trade, handles or has control of any goods; or
 - (c) has information relevant to the administration of this Act,

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

- (2) A notice issued under subsection (1) may require the person to –
- (a) produce specified documents, records or data in original or in a specified form;
 - (b) provide the information in a form or manner determined by the Commission; and/or
 - (c) verify the information by affidavit or other prescribed form.
- (3) A person may not, without reasonable cause, fail to comply with a notice issued under subsection (1).

29. Authority of Commission to suspend, cancel or amend permits and certificates

The Commission may suspend, cancel or amend a permit or a certificate issued in terms of this Act if, amongst others –

- (a) a condition provided for in the permit or certificate has not been adhered to;
- (b) the permit or certificate contains incorrect information; or
- (c) the Commission has been refused information or access to information in terms of section 27(2A).

Part C

Customs duty applications

30. Customs duty applications

- (1) The Commission must, upon receipt of an application in terms of section 26(1)(c), (cB) or (d) –
 - (a) notify the SACU Secretariat of the application; and
 - (b) ascertain whether an application dealing with a substantially similar matter is pending before the relevant SACU institution or has been decided upon by the relevant SACU institution within the previous six months from the date of that application.
- (2) If the Commission determines that an application before it deals with a substantially similar matter contemplated in subsection (1)(b), the Commission may –
 - (a) advise the applicant in writing that the application will not be considered and inform the SACU Secretariat accordingly; or
 - (b) investigate and evaluate the application and recommend to the Tariff Board that the application be approved or rejected.
- (3) If the Commission determines that an application before it does not deal with a substantially similar matter contemplated in subsection (1)(b), the Commission must evaluate the merits of the application and recommend to the Tariff Board that the application be approved or rejected.
- (4) The Commission must, when evaluating a matter in terms of this section, apply any relevant rules of analysis established by the SACU Council through the formulation of policy mandates, procedures or guidelines contemplated in Article 8(2).
- (5)
 - (a) The Commission may, when considering an application referred to in section 26(1)(c), request the Commissioner for the South African Revenue Service to impose a provisional payment contemplated in Chapter VI of the Customs and Excise Act.
 - (b) If the Commission has acted in terms of paragraph (a) it must make a final recommendation to the Tariff Board when it has completed its evaluation.

(Commencement date of s. 30: To be proclaimed)

31. Requests

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

- (a) evaluate a recommendation made to the Tariff Board by another Member State; or
 - (b) investigate and compile information available within the Republic concerning such a recommendation.
- (2) The Commission may receive a request from the National Body of a Member State to –
- (a) evaluate an application for a customs duty amendment received by that Member State; or
 - (b) investigate and compile information available within the Republic concerning such an application.
- (3) The Commission must, upon receiving a request in terms of subsection (1)(a) or (2)(a), evaluate the application or recommendation, and make a recommendation to the Tariff Board concerning the matter.
- (4) The Commission must, upon receiving a request in terms of subsection (1)(b) or (2)(b), conduct an investigation or compile the information requested and deliver a report concerning the matter to the Tariff Board or relevant National Body, as the case may be.
- (5) Section 26, read with the changes required by the context, applies to a request received by the Commission in terms of subsection (1) or (2).
- (6) The Commission may request the National Body of another Member State to–
- (a) evaluate –
 - (i) an application for customs duty amendment received by the Commission; or
 - (ii) a recommendation made to the Tariff Board by another Member State; or
 - (b) investigate and compile information available within its jurisdiction concerning such an application or recommendation.
(Commencement date of s. 31: To be proclaimed)

32. Consideration of alleged dumping and subsidised exports

- (1) Despite section 1, in this section–
- (a) “export” means to bring or send goods, or to cause them to be brought or sent, into the Common Customs Area from a country or territory outside the Common Customs Area; and

- (b) “exporter” means any person who brings or sends goods, or causes them to be brought or sent, into the Common Customs Area from a country or territory outside the Common Customs Area.
- (2) For the purpose of considering an application alleging the dumping or subsidised export of goods into the Common Customs Area-
 - (a) “export price”, subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;
 - (b) “normal value”, in respect of any goods, means-
 - (i) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or
 - (ii) in the absence of information on a price contemplated in subparagraph (i), either-
 - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
 - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative;
 - (c) “subsidised export” means goods exported into the Common Customs Area, in respect of which the government of, or a public body within, any country-
 - (i) has provided-
 - (aa) any form of financial aid;
 - (bb) any form of assistance with its production, manufacture, transportation or export; or
 - (cc) any similar assistance; or
 - (ii) has foregone any revenue that would otherwise be due to that government or public body; and
 - (d) “public body” includes a person or body that acts on behalf of the government of, or another public body within, a country.

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

Part D

Confidential information

33. Right to claim confidentiality

- (1) A person may, when submitting information to the Commission, identify information that the person claims to be information that –
 - (a) is confidential by its nature; or
 - (b) the person otherwise wishes to be recognised as confidential.
- (2) A person making a claim in terms of subsection (1) must support that claim with –

- (a) a written statement in the prescribed form
 - (i) explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of “information that is by nature confidential” in section 1(2); or
 - (ii) motivating, in the case of other information, why that information should be recognised as confidential; and
 - (b) either –
 - (i) a written abstract of the information in a non-confidential form; or
 - (ii) a sworn statement setting out the reasons why it is impossible to comply with subparagraph (i).
- (3) The Commission may disregard any information for which a claim of confidentiality is made for which the person submitting it fails to provide –
- (a) a written statement in terms of subsection (2)(a); and
 - (b) in terms of subsection (2)(b) –
 - (i) a written abstract; or
 - (ii) a sworn statement setting out why such an abstract cannot be provided.

33A. Applicability

- (1) This Part applies to confidential information submitted to, or obtained by, the Commission in –
- (a) applications contemplated in section 26(1)(c), (cA), (cB) and (d); and
 - (b) investigations contemplated in section 16(1)(a), (b), (c), (cA) and (d).
- (2) Despite subsection (1)(b), in an investigation contemplated in section 16(1)(d), this Part applies only to confidential information of persons other than the Minister or the Commission.
- (3) The Commission may make provision in proceedings **other than those provided for in subsection (1)** for the submission of information that a person alleges to be confidential. Access to such information in the possession of the Commission shall be regulated by the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

34. Determination by Commission

- (1) If a person makes a claim in terms of section 33, the Commission must –
 - (a) in the case of information claimed to be confidential by nature, determine whether the information satisfies the requirements of the definition of “information that is by nature confidential” set out in section 1(2); or
 - (b) in the case of other information, determine whether the information should be recognised as confidential.
- (2) If, upon considering a claim in terms of subsection (1)(a), the Commission determines that the information is not, by nature, confidential –
 - (a) the Commission must invite the claimant to submit a further motivation for the information to be recognised as otherwise confidential; and
 - (b) if the claimant submits such a motivation within the prescribed time, the Commission must reconsider the claim in terms of subsection (1)(b).
- (3) Upon making a final determination in terms of subsection (1) or (2)(b), the Commission –
 - (a) must notify the claimant in writing of its determination; and
 - (b) may, if it has determined that the information is not, by nature, confidential or should not be recognised as being otherwise confidential, advise the claimant that the information will not be considered in determining the merits of an application or other matter in question.

35. Proceedings in contested claims

- (1) A claimant affected by a determination of the Commission in terms of section 34(3) may appeal against that determination to a High Court, subject to its rules, in the prescribed manner and form.
- (2) A person who seeks access to information which the Commission has determined is, by nature, confidential, or should be recognised as otherwise confidential, may-
 - (a) first, request that the Commission mediate between the owner of the information and that person; and
 - (b) failing mediation in terms of paragraph (a), apply to a High Court for-
 - (i) an order setting aside the determination of the Commission; or

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

36. Disclosure of information

- (1) The Commission must treat any information that is the subject of a claim in terms of this Part as confidential until a final determination has been made concerning such information.
- (2) Once a final determination has been made concerning any information, it is confidential only to the extent that the final determination has accepted it to be confidential information.
- (3) For the purposes of this section and section 37, “final determination” means a decision by –
 - (a) the High Court, that in terms of the rules of court may not be appealed, or has not been appealed within the time allowed; or
 - (b) the Supreme Court of Appeal.

37. Restricted use of information

- (1)
 - (a) When making any decision in terms of this Act, the Commission may take confidential information into account in making its decision.
 - (b) If the Commission’s reasons for the decision would reveal any confidential information, the Commission must, after publishing its decision in the matter, provide a copy of the proposed reasons to the party concerned within the prescribed time before publishing those reasons.
- (2) A party may apply to a High Court, subject to its rules, within the time period contemplated in subsection (1)(b) after receiving a copy of the proposed reasons, for an appropriate order to protect the confidentiality of the relevant information.

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

Part E

Powers of investigative search and inspections

38. Appointment of investigating officers

- (1) The Chief Commissioner may appoint any person in the service of the Commission, or any other suitable person, as an investigating officer.
- (2) An investigating officer must be provided with a certificate of appointment signed by the Chief Commissioner stating that the person has been appointed as an investigating officer in terms of this Act.
- (3) When an investigating officer performs any function in terms of this Act or any other law, the investigating officer must –
 - (a) be in possession of a certificate of appointment issued in terms of subsection (2); and
 - (b) show that certificate to any person who is affected by the investigation, or if no one is present on the premises, affix a copy of the certificate to the premises in a prominent and visible place and proceed with the execution of the relevant function.

39. Summons

- (1) The Chief Commissioner may –
 - (a) direct the Commission, a committee or an investigating officer to question any person under oath or affirmation; or
 - (b) give directions prohibiting or restricting the publication of any evidence given to the Commission.
- (2) The Chief Commissioner may, at any time during an investigation in terms of this Act, summon any person who can furnish any information on the subject of the investigation, or who has possession or control of any book, document or other object that has a bearing on that subject to-
 - (a) appear before the Chief Commissioner, the Commission, a committee or a person authorised by the Chief Commissioner to be questioned; or

- (b) deliver or produce any book, document or other object referred to in the summons, to the Chief Commissioner, the Commission, a committee or a person authorised by the Chief Commissioner, at a time and place specified in the summons.
- (3) The Commission or a committee may –
- (a) accept oral submissions from any person;
 - (b) accept as evidence any relevant oral testimony, document or other thing, whether or not-
 - (i) it is given or proven under oath or affirmation; or
 - (ii) would be admissible as evidence in court; or
 - (c) refuse to accept any oral testimony, document or other thing that is unduly repetitious.
- (4) When the Commission or a committee hears oral testimony in terms of subsection (3), the Commission or committee –
- (a) may require the witness who testified to deliver a sworn statement of the evidence given, in the prescribed manner and form; and
 - (b) must, after the witness has complied, disregard the oral testimony of that witness and consider only the written statement of evidence of the witness.

40. Witnesses

- (1) A person questioned or giving evidence in terms of section 39, must answer every relevant question truthfully and to the best of that person's ability.
- (2) The law regarding a witness' privilege in a criminal case in a court of law applies equally to a person who is giving evidence in terms of section 39.
- (3) A self-incriminating answer given or statement made to a person exercising powers in terms of this Act is not admissible as evidence against the person who gave that answer or made that statement in criminal proceedings, except for perjury or an offence contemplated in section 53 or 54(2)(d).

41. Inspections

- (1) An investigating officer may, subject to section 38(3), conduct an inspection to determine whether Part B of Chapter 4 or any notice issued in terms of section 6 or 17 is being or has been complied with, and for that purpose may at any reasonable time –

- (a) enter upon and inspect any place, premises or vehicle in or on which any goods to which section 6 or 17 applies are stored, manufactured, supplied, handled, sold, removed, transported or otherwise dealt with;
- (b) request information about any article or document from the owner, or person in control, of the premises or from any person who has control of the article or document or from any other person who may have the information;
- (c) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to –
 - (i) search for any data contained in or available to that computer system; and
 - (ii) reproduce any record from that data;
- (d) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the inspection;
- (e) direct any person who manufactures, supplies, stores, handles, sells, removes, transports or otherwise deals with any goods to which section 6 or 17 applies, or who has done any of those things with regard to such goods, or the servant or agent of such a person to –
 - (i) produce to the investigating officer any such goods or any book or other document in connection with such goods in the custody or under the control of that person; or
 - (ii) furnish the investigating officer with any information in relation to those goods that the investigating officer specifies;
- (f) inspect any such goods, any book or document, or make extracts from or copies of any such book or document;
- (g) seize any such goods, any book or document that may afford evidence of any offence in terms of this Act;
- (h) leave on such goods, book or document or the container in which they are located, any identification mark or seal; and
- (i) question a person who –
 - (i) is the owner or otherwise in possession, custody or control of, or has any interest in, or performs any duties in connection with any item referred to in paragraphs (a) - (h); or
 - (ii) produced any goods or documents inspected or found during an inspection; and

- (j) take photographs or make audio or audio-visual recordings of anything or any person that –
 - (i) may be relevant for any inspection; or
 - (ii) may afford evidence for the purpose of any criminal or civil proceedings.

- (1A) If a person is required in terms of this section to produce any goods, books or documents or to answer any questions and fails or refuses to comply, an investigator may issue a written notice to that person directing that person to appear before that or any other investigator at a time and place specified in the notice –
 - (a) to produce any goods, books or documents specified in the notice; or
 - (b) to answer questions concerning a matter specified in the notice.

- (1B) A written notice issued in terms of subsection (1A) –
 - (a) must be in a format determined by the Commission; and
 - (b) may require the person to answer questions under oath or affirmation.

- (1C) (a) A person to whom a written notice is issued in terms of subsection (1A) must truthfully and to the best of that person's ability answer all questions put to that person in consequence of the notice.
- (b) An answer given by a person that incriminates him or her may not be used against that person in any subsequent criminal proceedings against that person.

- (2) Sections 43 to 45 do not apply to an inspection in terms of this section.

42. Conduct of entry and search

- (1) A person who enters and searches any premises must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.
- (2) During a search only a female investigating officer or female police officer may search a female person, and only a male investigating officer or male police officer may search a male person.
- (3) A person who enters and searches premises must, before questioning anyone–
 - (a) advise that person of the right to legal representation; and
 - (b) allow that person to exercise that right.

- (4) A person who removes anything from premises being searched must –
 - (a) issue a receipt for it to the owner, or person in control of, the premises; and
 - (b) return it as soon as practicable after achieving the purpose for which it was removed.
- (5) Any person who has custody or control of goods, books or documents referred to in section 41, must, subject to subsection (6), give the investigating officer the necessary assistance to examine those goods, books or documents, when requested to do so by the investigating officer.
- (6) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains confidential information.
- (7) If the owner or person in control of an article or document refuses, in terms of subsection (6), to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of a High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is confidential.
- (8) Section 40(3) applies to an answer given or statement made to an investigating officer in terms of section 41.
- (9) A person authorised to conduct an entry and search may be accompanied and assisted by a police officer and/or a customs official.
- (10) A police officer who is acting in terms of subsection (9), may, if entry and search is refused, overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.
- (11) The police officer must, before using force in terms of subsection (10), audibly demand admission and announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.
- (12) The Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

43. Power to enter and search under warrant

- (1) A judge of a High Court, regional magistrate or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there

are reasonable grounds to believe that anything connected with an investigation in terms of this Act is in the possession of, or under the control of, a person who is on or in those premises.

- (2) A warrant to enter and search may be issued at any time and must specifically—
 - (a) identify the premises that may be entered and searched; and
 - (b) authorise an investigating officer or a police officer to enter and search the premises and to do anything referred to in section 45.
- (3) A warrant to enter and search is valid until the —
 - (a) warrant is executed;
 - (b) warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
 - (c) purpose for issuing it has lapsed; or
 - (d) expiry of one month after the date that it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the person who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.
- (5) A person executing a warrant must before commencing with the execution of the warrant—
 - (a) provide identification to the owner or person in control of the premises and explain to that person the purpose of the warrant; and
 - (b) hand a copy of the warrant to that person or to the person named in it.
- (6) If no one is present on the premises, affix a copy of the warrant to the premises in a prominent and visible place.

44. Power to enter and search without warrant

- (1) An investigating officer may, without a warrant, enter and search premises other than a private dwelling.
- (2) The investigating officer conducting the search must, before entering and searching—
 - (a) believe on reasonable grounds that a warrant would be issued under section 43 if applied for, and that the delay in obtaining a warrant would defeat the object or purpose of the entry and search; and

- (b) provide identification to the owner or person in control of the premises and explain to that person the purpose of the search; or
 - (c) get permission from that person to enter and search the premises.
- (3) An entry and search without a warrant may be carried out only during the day, unless carrying it out at night is justifiable and necessary.

45. Power to enter and search

- (1) Section 42, read with the changes required by the context, applies to an entry and search under section 43 or 44.
- (2) A person who is acting under section 43 or 44 may –
- (a) enter upon or into those premises;
 - (b) search those premises;
 - (c) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
 - (d) examine any article or document that is on or in those premises that has a bearing on the investigation;
 - (e) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
 - (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
 - (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to-
 - (i) search any data contained in or available to that computer system; and
 - (ii) reproduce any record from that data; and
 - (h) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation.
- (3) Section 40(3) applies to an answer given or statement made to an investigating officer in terms of this section.

45A. Disposal of article where no criminal proceedings are instituted or where the article is not required for criminal proceedings

- (1) (a) If no criminal proceedings are instituted in connection with an article attached or seized under this Act or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article or, if such person may not lawfully possess such article, to the person who may lawfully possess it.
 - (b) If no person may lawfully possess the article referred to in paragraph (a) or if the Commission reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.
 - (c) For the purpose of this section, no person may lawfully possess such an article if that article was imported contrary to the provisions of this Act.
- (2) The person who may lawfully possess the article referred to in paragraph (1)(a) shall be notified by registered post at his last-known address that he may take possession of the article, and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the State.

Part F

Reviews and appeals

46. Reviews

- (1) A person affected by a determination, recommendation or decision of the Commission in terms of section 16 or 17 or this Chapter, may apply to a High Court for a review of that determination, recommendation or decision.
- (2) Subject to item 2(3) of Schedule 2, a person affected by a decision of the SACU Council, arising in whole or in part out of a recommendation of the Commission in terms of this Act, may apply for a review of that decision only to an institution designated by or in terms of the SACU Agreement, and in accordance with the rules of that institution.
(Commencement date of sub-s. (2): To be proclaimed)
- (3) The High Court may, in a review in terms of subsection (1) or item 2(3) of Schedule 2, make an order for the payment of costs against any party, or against any person who represented a party in the proceedings, according to the requirements of the law and fairness.

47. Appeals

- (1) An appeal against a decision of the High Court in respect of a matter within its jurisdiction in terms of section 46 lies to the Supreme Court of Appeal, or the Constitutional Court, only with leave to appeal, and subject to their respective rules.
- (2) The right to appeal in terms of subsection (1) is-
 - (a) subject to any law that specifically grants, limits or excludes any right of appeal; and
 - (b) not limited by the monetary or non-monetary value of the matter in dispute.
- (3) A court granting leave to appeal in terms of this section may attach any appropriate conditions, including a condition that the applicant provide security for the costs of the appeal.
- (4) Section 21(1A) to (3)(e) of the Supreme Court Act, 1959 (Act No. 59 of 1959), read with the changes required by the context, applies to an application to the Supreme Court of Appeal for leave to appeal under this Act.

CHAPTER 5**ENFORCEMENT AND OFFENCES****48. Variation of order**

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

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

49. Standard of proof

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

49A Administrative penalties

- (1) If a person becomes liable to prosecution for an offence in terms of this Act, the Commission may offer that person the opportunity to settle the matter

- by payment of an administrative penalty in lieu of referral of the matter for criminal prosecution.
- (2) An offer contemplated in subsection (1) must be made by written notice to the person concerned and must -
 - (a) set out the nature of the alleged offence;
 - (b) specify the proposed amount of the administrative penalty; and
 - (c) inform the person that prosecution may be avoided if that person elects to have the matter summarily settled by paying the administrative penalty within the period specified in the notice.
 - (3) Before determining the final amount of an administrative penalty, the Commission must afford the person concerned a reasonable opportunity to make written representations regarding the alleged offence and the proposed penalty amount.
 - (4) After considering any representations submitted in terms of subsection (3), the Commission may determine the amount of the administrative penalty.
 - (5) The amount of an administrative penalty imposed in terms of subsection (1) –
 - (a) must be determined in accordance with any limits prescribed by regulation; and
 - (b) may not exceed the maximum fine a court may impose upon conviction of a person for the relevant offence.
 - (6) A person who elects to accept an offer contemplated in subsection (1) must do so in writing and must pay the administrative penalty within the period specified in the notice.
 - (7) Payment of an administrative penalty in terms of this section –
 - (d) does not constitute a conviction for the offence concerned; and
 - (e) precludes the referral of the matter for criminal prosecution in respect of that offence, unless the penalty was paid on the basis of materially false or misleading information.
 - (8) If a person declines or fails to accept an offer contemplated in subsection (1) within the prescribed period, the Commission may refer the matter to the National Prosecuting Authority for consideration of prosecution.
 - (9) The Minister may make regulations prescribing –

- (a) the procedure for the imposition and payment of administrative penalties;
- (b) criteria to be considered in determining the amount of a penalty; and
- (c) maximum and, where appropriate, minimum amounts of administrative penalties applicable to different categories of offences.

50. Breach of confidence

- (1) It is an offence to disclose any confidential information concerning the affairs of any person obtained –
 - (a) in carrying out any function in terms of this Act; or
 - (b) as a result of initiating a complaint, or participating in any proceedings in terms of this Act.
- (2) Subsection (1) does not apply to information disclosed –
 - (a) for the purpose of the proper administration or enforcement of this Act;
 - (b) for the purpose of the administration of justice;
 - (c) at the request of an investigating officer or member of the Commission entitled to receive the information; or
 - (d) within the terms of appropriate order of access made in terms of section 35(2).

51. Hindering administration of Act

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

52. Failure to attend when summoned

It is an offence, when summoned in terms of section 39, to –

- (a) fail, without sufficient cause, to appear at the time and place specified or to remain in attendance until excused; or
- (b) attend as required, but to –
 - (i) refuse to be sworn in or to make an affirmation; or

- (ii) fail to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

53. Failure to answer fully or truthfully

It is an offence, having been sworn in or having made an affirmation to –

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

54. Other offences

(1) It is an offence to fail to comply with –

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

(2) It is an offence to –

- (a) improperly attempt to influence the Commission concerning any matter connected with an investigation;
- (b) anticipate any findings of the Commission concerning an investigation in a way that is calculated to influence the proceedings or findings;
- (c) do anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (d) knowingly provide false or misleading information to the Commission;
- (e) wilfully interrupt the proceedings in the place where a hearing is being conducted;
- (f) act contrary to a warrant to enter and search;
- (g) falsely represent oneself as an investigating officer or other official of the Commission;
- (h) acquire or receive in any manner goods imported contrary to a notice issued in terms of section 6 without having reasonable cause for believing at the time of such acquisition or receipt that such goods were lawfully imported into the Republic;

- (i) possess any goods imported contrary to a notice issued in terms of section 6 if the person in whose possession it is found is unable to give a satisfactory account of such possession;
- (j) propose to an investigator, or gives or promises to give any reward to an investigator, whether directly or through a third party –
 - (i) to refrain from doing something which that investigator must or may do in terms of this Act; or
 - (ii) to induce that investigator to do something which the investigator may do or may not do in terms of this Act;
- (k) possess a falsified permit, certificate or other Commission document if the person in whose possession the document is found is unable to give a satisfactory account of such possession; or
- (l) conspire with an investigator to do or permit anything in contravention of this Act.

55. Penalties

- (1) Any person convicted of an offence in terms of this Act, is liable –
 - (a) in the case of a contravention of section 54(1), 54(2)(h), 54(2)(i), 54(2)(j) or 54(2)(k) or 54(2)(l) to a fine not exceeding R500 000,00 or to imprisonment for a period not exceeding ten years, or to both such fine and imprisonment;
 - (b) in case of a contravention of section 50, 53, 54(2)(c) or 54(2)(d), to a fine not exceeding R250 000,00 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment; or
 - (c) in any other case, to a fine not exceeding R20 000,00 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.
- (2) A court convicting a person of importing or exporting, or attempting to import or export, goods in contravention of a notice issued in terms of section 6, or failing to comply with a condition of a permit issued in terms of section 27, may declare the goods in question, or the right of that person to those goods, forfeited to the State.
- (3) A declaration in terms of subsection (2) does not affect the rights to the goods in question of any person other than the convicted person, unless it is proved that the other person should reasonably have known that the goods were being dealt with in contravention of the notice or condition in question.

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

56. Magistrates' Court jurisdiction to impose penalties

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

57. Serving of documents

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

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

58. Proof of facts

- (1) In any criminal proceedings in terms of this Act, upon proof that a statement, entry, record or information that appears in or on a book, document, plan, drawing or computer storage medium, is false-
- (a) the person who was in possession of, or in control of, such book, document, plan, drawing or computer storage medium; and
 - (b) any person who knew or ought to have known about the entry, record or information, must in the absence of evidence to the contrary which raises a reasonable doubt, be presumed to be responsible for the false statement, entry, record or information.
- (2) In criminal proceedings in terms of section 54(2)(h), proof of possession of goods imported contrary to a notice issued in terms of section 6 shall, in the absence of evidence to the contrary which raises a reasonable doubt, be sufficient evidence of the absence of reasonable cause.

CHAPTER 6

GENERAL PROVISIONS

59. Regulations

The Minister may make regulations –

- (a) regarding the proceedings and functions of the Commission, after consulting the Commission;

- (b) to give effect to the objects of this Act; and
- (c) on any matter that may or must be prescribed in terms of this Act.

60. Guidelines

- (1) The Commission may issue guidelines on the Commission's policy approach to any matter within its jurisdiction.
- (2) A guideline issued in terms of subsection (1) –
 - (a) must be published in the *Gazette*; but
 - (b) is not binding on the Commission, any SACU institution or any Court.

61. Official seal

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

62. Act binds State

This Act binds the State.

63. Transitional arrangements and repeal of laws

- (1) Schedule 2 regulates transitional arrangements in respect of international trade administration within the Republic.
- (2) The laws specified in Schedule 3 are, subject to subsection (3) and Schedule 2, repealed to the extent indicated in the third column of that Schedule.
- (3) Despite subsection (2), a regulation promulgated in terms of the Import and Export Control Act, 1963 (Act No. 45 of 1963), and in force immediately before this Act came into operation, must be regarded as being a regulation made in terms of this Act.

64. Short title and commencement

- (1) This Act is called the International Trade Administration Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Sections 4, 15(3), 16(3), 19, 20, 30, 31 and 46(2) and item 2(3) of Schedule 2, may not come into operation until the SACU Agreement has become law in the Republic.

SCHEDULE 1

SACU AGREEMENT

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

SCHEDULE 2

TRANSITIONAL PROVISIONS

1. Definitions

In this Schedule –

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

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

2. Implementation of SACU Agreement

- (1) Before the sections listed in section 64(2) come into operation, the Commission must investigate, and evaluate applications received by it in terms of section 26(1)(c), (cB) or (d) in accordance with section 32, read with the Board on Tariffs and Trade Act, as if that Act had not been repealed.
- (2) For the purposes of this item, a reference in the Board on Tariffs and Trade Act to the Board must be regarded as referring to the Commission.
- (3) Until the SACU Agreement provides for a review of decisions of the SACU Council, contemplated in section 46(2), a person affected by such a decision may apply to a High Court for a review of that decision, unless that person or a related person has sought a review of the same decision in terms of the law of another Member State.
(Commencement date of item 2 (3): To be proclaimed)

3. Composition of Commission

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

4. Pending applications and other Board business

- (1) Any matter pending before the Board immediately before this Act came into operation and in respect of which the Board has not reported to the Minister in terms of section 4(1)(b) of the Board on Tariffs and Trade Act, 1986, must be proceeded with by the Commission in terms of this Act.
- (2) Any matter on which the Board reported to the Minister in terms of section 4(1)(b) of the Board on Tariffs and Trade Act, 1986, before this Act came into operation must be proceeded with in terms of that Act as if it had not been repealed.
- (3) Any summons issued by the Board in terms of section 12 of the Board on Tariffs and Trade Act, 1986, that is returnable after this Act comes into operation must be regarded-
 - (a) as a summons to appear before the Commission on the date and at the time and place shown on the summons; and
 - (b) as having been issued by the Chief Commissioner in terms of this Act.
- (4) A permit issued or notice given in terms of the Import and Export Control Act, 1963, and valid immediately before this Act came into operation, must be regarded as a permit issued or notice given in terms of this Act.

5. Statutory references

- (1) Any reference in any law to –
 - (a) the “Board on Tariffs and Trade Act, 1986”, must be regarded as a reference to this Act;
 - (b) the “Board on Tariffs and Trade established in terms of the Board on Tariffs and Trade Act, 1986”, must be regarded as a reference to the International Trade Administration Commission established in terms of this Act;
 - (c) a “report and recommendation to the Minister referred to in section 4(1)(b) of the Board on Tariffs and Trade Act, 1986”, depending on the context, must be regarded as a reference to either-
 - (i) a “recommendation concerning a matter to the Tariff Board” in terms of section 30; or
 - (ii) the “determination” of a matter in terms of section 27(1)(a); and
 - (d) an “enquiry referred to in section 12 of the Board on Tariffs and Trade Act, 1986”, must be regarded as a reference to an “investigation” in terms of this Act.

- (2) A reference to the “Director-General: Trade and Industry” in section 48(2A) of the Customs and Excise Act, must be regarded as a reference to the International Trade Administration Commission.

6. Status of Board Employees and others

- (1) An outstanding delegation to an officer or employee of the Department of Trade and Industry in terms of section 13 of the Board on Tariffs and Trade Act, 1986, may not be continued under this Act.
- (2) A person who, immediately before this Act came into operation, was designated in terms of section 14 of the Board on Tariffs and Trade Act, 1986, as an investigating officer, or was designated in terms of section 3A (2) of the Import and Export Control Act, 1963, as an inspector, is not an investigating officer in terms of this Act unless appointed in terms of section 38 of this Act.
- (3) An officer or employee appointed in terms of the Public Service Act, 1994 (Proclamation No 103 of 1994), to serve the Board immediately before this Act came into operation, continues to be an officer or employee under the Public Service Act, 1994.
- (4) If an officer or employee referred to in subitem (3) is appointed as an officer or employee of the Commission, the accumulated value of that person's contributions to any pension fund, together with the accumulated value of the contributions made to that fund by the person's employer, may be transferred to a pension fund established for the staff of the Commission.

SCHEDULE 3

REPEAL OF LAWS (SECTION 63(2))

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