

Statutory Instrument 266 of 2002

Competition (Anti-Dumping and Countervailing Duty) (Investigation) Regulations, 2002

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IT is hereby notified that the Minister of Industry and International Trade has, in terms of section 50 of the Competition Act, 1996 (No. 7 of 1996), made the following regulations:—

PART I

PRELIMINARY

1. Title

These regulations may be cited as the Competition (Anti-Dumping and Countervailing Duties) (Investigation) Regulations, 2002.

2. Interpretation

In these regulations—

- “Agreement on Agriculture” means the agreement by that name set out in Annex 1A to the World Trade Organisation Agreement;
- “Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994” means the Agreement by that name set out in Annex 1A to the World Trade Organisation Agreement.
- “Agreement on Subsidies and Countervailing Measures” means the Agreement by that name set out in Annex 1A to the World Trade Organisation Agreement;
- “anti-dumping duty investigation” means an investigation by the Commission with a view to determine whether the imposition of an anti-dumping duty is appropriate in the circumstances of the case;
- “the Commission” means the Competition and Tariff Commission established in terms of section 4 of the Act;
- “country” includes a customs union territory;
- “countervailing duty investigation” means an investigation by the Commission with a view to determine whether the imposition of a countervailing duty would be appropriate in the circumstances of the case;
- “domestic industry” means—
- (a) domestic producers of like products; or
 - (b) the domestic producers whose collective output of like products constitutes a major proportion of the total domestic production of those products,
- but shall not, subject to Part II, include domestic producers who are related to the exporters or importers, or are themselves importers of the subject products;
- “dumping margin” means the amount by which the normal value of the subject products exceeds the export price;
- “export price” means the export price of the subject products as determined in accordance with section 16;
- “exporting country” means—
- (a) the country of export of the subject products; or
 - (b) where the subject products are not exported directly to Zimbabwe but are transhipped without substantial transformation through an intermediate country, the country of origin of the subject products;
- “General Agreement on Tariffs and Trade 1994” means the agreement by that name whose parts are described in Annex 1A to the World Trade Organisation Agreement;
- “interested party” in relation to subject products, means—
- (a) a producer, exporter or importer of the subject products;
 - (b) a trade or business association of which a majority of its members are producers, exporters or importers of the subject products;
 - (c) the government of a country in which the subject products are produced or from which they are exported;
 - (d) a producer of the like products in Zimbabwe;
 - (e) a trade or business association of which a minority of its members produce the like products in Zimbabwe; or
 - (f) any other person the Minister considers appropriate;

“like products” in relation to subject products, means any products which the Minister determines as being identical in all respects to the subject products or any products which the Minister determines to have characteristics closely resembling those of the subject products;

“non-market economy country” means any foreign country the government of which has a complete or substantially complete monopoly of its trade and where domestic prices are fixed by the government of the foreign country;

“normal value” in relation to subject products, means the normal value of any subject products as determined in accordance with section 15 or 18;

“producer” means such producer, manufacturer or processor as may be prescribed;

“provisional measures” means—

(a) in relation to Part II, the requirement to pay the duty or furnish a security equal to the estimated subsidy found in the preliminary determination; and

(b) in relation to Part III, the requirement to pay the provisional duty or furnish a security equal to the estimated dumping margin found in preliminary determination;

“subject products” means the products imported, or sold for importation into Zimbabwe that are the subject of any countervailing or anti-dumping duty investigation or review under these regulations;

“undertakings” means such undertakings as may be prescribed;

“World Trade Organisation Agreement” means the Marrakesh Agreement Establishing the World Trade Organisation concluded at Marrakesh on 15 April 1994;

“subsidy”, in relation to products that are imported into Zimbabwe means a benefit received or conferred in connection with such products in any of the following forms—

(a) a financial contribution by a government or public body of the country of export that is made in connection with the growth, production, manufacture or exportation of those products that involves—

(i) a direct transfer of funds from that government or public body;

(ii) a potential direct transfer of funds or liabilities from that government or public body;

(iii) the foregoing, or non-collection of revenue (other than an allowance, exemption or remission) due to that government or public body;

(iv) the provision by that government or public body of products or services otherwise than in the course of providing normal infrastructure; or

(v) the purchase by that government or public body of products; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or public body in the country of export,

but shall not include any government action that satisfies the conditions described in footnote 1 of the Agreement of Subsidies and Countervailing Measures.

(2) Subject to subsection (4), a subsidy shall be countervailable if the receipt of the benefit is, in law or in fact—
(a) specific to an enterprise or industry or group of enterprises or industries within the jurisdiction of the granting authority; or (b) contingent upon—

(i) export performance;

(ii) the use of domestic over imported products; or

(iii) location in a designated geographic region within the jurisdiction of the granting authority.

(3) A subsidy shall not be countervailable if the Minister determines that—

(a) the Government action satisfies the conditions described in paragraph (a), (b) or (c) of Article 8.2 of the Agreement on Subsidies and Countervailing Measures;

(b) the Government action has been notified in accordance with Article 8.3 of the Agreement on Subsidies and Countervailing Measures and there has been no determination by the Committee on Subsidies and Countervailing Measures or an arbitral body under Article 8.4 or 8.5 of that Agreement that the action does not satisfy the criteria in Article 8.2. of that Agreement; or

(c) the Government action is a domestic support measure that meets the criteria or conditions set out in Annex 2 to the Agreement on Agriculture.

(4) The amount of countervailable subsidy shall be calculated in the prescribed manner.

(5) For the purposes of these regulations—

(a) parties shall be deemed to be related if—

(i) one of them, directly or indirectly, controls the other;

(ii) both of them are, directly or indirectly controlled by a third party; or (iii) together they, directly or indirectly, control a third party;

Provided that one party shall be deemed to control another when the first-mentioned party is legally or operationally in a position to exercise restraint or direction over the latter.

PART II
COUNTERVAILING DUTIES

3. Imposition of countervailing duties

(1) The Minister may on the evidence furnished by the Commission after completing an investigation recommend the imposition by the Minister responsible for finance of a countervailing duty on any subject imported into Zimbabwe where he determines—

(a) that a subsidy is being provided with respect to the subject products; and (b) that—

- (i) the subject products are, through the effects of subsidy, causing or threatening to cause material prejudice to the domestic industry in Zimbabwe producing like products; or
- (ii) the subject products are, through the effects of the subsidy, materially impeding the establishment of any domestic industry for like products in Zimbabwe.

(2) In recommending the imposition of a countervailing duty the Minister shall specify the amount of duty—

- (a) equal to the amount of countervailable subsidy determined by the Commission to have been provided with respect to the subject products; or
- (b) an amount less than that referred to in paragraph (a) if the Minister determines that such a lower duty is sufficient to eliminate the prejudice in the particular case.

(3) In determining whether or not any subject products occasion prejudice or potential prejudice to any domestic industry as defined in paragraph (b) of subsection (1) of the Commission must be satisfied that there is a causal link between the subject products and the prejudice or potential prejudice complained of;

(3) For purposes of this section—

- (a) it must be demonstrated that the subject products are causing prejudice within the meaning of these regulations;
- (b) the demonstration of a causal relationship between the subject products and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Commission;
- (c) the Commission shall also examine any known factors other than the subject products which at the same time are prejudicing the domestic industry.

(4) Where the country of origin of the subject products is a non-market economy country, the countervailable subsidy and countervailing duty shall be determined in the prescribed manner.

4. Initiation of countervailing duty investigation

(1) Any person may, on his own initiative or on behalf of a domestic industry producing like products submit a written petition to the Commission requesting that a countervailing duty investigation be initiated with regard to products imported, or likely to be imported, into Zimbabwe.

(2) A petition shall be in such form as may be prescribed by the Minister and shall include evidence of each of the elements specified in subsection (1) of section 3 and such other evidence that may be relevant or reasonably required by the Minister or the Commission.

(3) The Commission shall, within the period prescribed, review the petition and other available information and determine whether—

(a) sufficient evidence to warrant the initiation of an investigation into whether the elements necessary for the imposition of a countervailing duty as provided under subsection (1) of section 3 exists; and (b) such an investigation is in the public interest.

(4) Where the Commission determines that sufficient evidence does not exist to warrant the initiation of a countervailing duty investigation or that such an investigation is not in the public interest, the Commission shall as soon as practicable notify the petitioner of its determination.

(5) Where the Commission determines that sufficient evidence exists to warrant the initiation of a countervailing duty investigation and that such an investigation is in the public interest, the Commission shall notify the appropriate interested parties and publish a notice of initiation of investigation in the Gazette.

(6) The Commission may, in special circumstances, initiate a countervailing duty investigation on its own accord where, in relation to any products imported or likely to be imported into Zimbabwe, it has sufficient evidence of each of the elements specified in subsection (1) of section 3.

(7) Where the Commission decides to initiate an investigation under subsection (6), it shall notify the appropriate interested parties and publish a notice of initiation of investigation.

(8) Notwithstanding this section, the Commission shall not initiate an investigation unless it has determined on the basis of an examination of the degree of support for, or opposition to, any written petition submitted under subsection (1)—

- (a) that the written petition is supported by a domestic producer of like products whose collective output constitutes more than 50 per centum of the total production of the like products produced by that portion of the domestic industry expressing either support for or opposition to the written petition; and
 - (b) that the domestic producers of like products expressly supporting the written petition account for not less than 25 per centum of the total production of the like products produced by the domestic industry.
- (9) For the purposes of subsection (8), in the case of fragmented industries involving an exceptionally large number of producers, the Commission may determine the support and opposition by using statistically valid sampling techniques.

5. Consultations with interested foreign governments

(1) The Commission shall immediately notify the Minister that it has received a petition or that it proposes on its own account to initiate a countervailing duty investigation, whereupon, the Minister shall, if advised by the Commission that sufficient evidence exists or appears to exist to warrant an investigation, consult with interested foreign government for the purposes of clarifying matters relevant to the investigation and arriving at a mutually agreed solution.

(2) The consultations shall not impede the conduct of the investigation.

6. Duration of investigation

All countervailing duty investigations shall, except in special circumstances, be concluded by the Commission within one year, and in no case more than eighteen months after initiation.

7. Preliminary determination

(1) The Commission shall, within such period as may be prescribed, make a preliminary determination—

(a) whether a countervailable subsidy is being provided with respect to the subject products, and the amount of such countervailable subsidy; and (b) whether—

- (i) the subject products are, through the effects of the subsidy, causing or threatening to cause material prejudice to the domestic industry in Zimbabwe producing like products;
- (ii) the subject products are, through the effects of the subsidy, materially impeding the establishment of the domestic industry for the production of like products in Zimbabwe.

(2) If the Commission makes a negative preliminary determination under subsection (1), it shall publish a notice stating the reasons therefor and may terminate the investigation if the Minister is satisfied that there is insufficient evidence of either subsidization or of prejudice to justify proceeding with the investigation.

(3) If the Commission makes an affirmative preliminary determination under subsection (1), it shall continue the investigation and publish a notice of—

- (a) the affirmative preliminary determination stating the reasons for its determination under subsection (1) (a) and (b); and
- (b) the provisional measures applicable.

8. Provisional measures

(1) On or before the publication of the notice referred to in subsection (3) of section 7 the Minister, may, if he considers such measures necessary to prevent the injury referred to in paragraph (b) of subsection (1) of section 7 from occurring during the period of investigation, recommend to the Minister responsible for finance the imposition of provisional measures with regard to the subject products imported into Zimbabwe.

(2) Provisional measures shall not be imposed sooner than sixty days from the date of initiation of the investigation.

(3) Provisional measures shall take the form of a provisional duty or a security equal to the amount of the estimated countervailable subsidy determined under subsection (1) of section 7.

(4) The application of provisional measures shall unless the Minister responsible for finance specifies a longer period, lapse after a period of four months.

9. Final determination of subsidy and prejudice

(1) The Commission shall, within such period as may be prescribed, make a final determination regarding—

(a) whether a countervailable subsidy is being provided with respect to the subject products, and the amount of such countervailable subsidy; and (b) whether—

- (i) the subject products are, through the effects of the subsidy, causing or threatening to cause material prejudice to the domestic industry in Zimbabwe producing like products;
- (ii) the subject products are, through the effects of the subsidy, materially impeding the establishment of the domestic industry for the production of like products in Zimbabwe; or

(2) Where the Commission makes a negative final determination under subsection (1), it shall— (a) terminate the investigation; and

(b) advise the termination any provisional measures applied under section 8 and notify the Commissioner of

Customs and Excise to release any security required by such measures; and (c) publish a notice of the negative final determination stating the reasons therefor.

(3) Where the Commission makes an affirmative final determination under subsection (1) it shall— (a) publish a notice of the affirmative final determination stating—

- (i) the reasons therefor;
- (ii) the countervailing duties applicable; and
- (iii) the subject products on which the countervailing duties apply; and

(b) advise the Minister to recommend the imposition of countervailing duties in accordance with subsection (2) of section 3 on the subject products imported into Zimbabwe on or after the date of publication of the affirmative final determination; and

(4) Where an affirmative final determination has been made, the Minister may take into consideration the public interest in determining whether or not to accept the recommendation of the Commission to request the Minister responsible for finance to impose countervailing duties and the amount of such duties.

(5) The Minister shall recommend the imposition of countervailing duties on the subject products against which provisional measures were applied where the Commission—

- (a) makes a determination of material prejudice under subparagraph (i) of subsection (1); or
- (b) makes a determination of threat of material prejudice under subparagraph (ii) of paragraph (b) of subsection (1) and finds the import of the subject products, in the absence of the provisional measures, would have led to a finding of material prejudice under subparagraph (i) of paragraph (b) of subsection (1).

(6) With respect to the imposition of any countervailing duty under subsection (5)—

- (a) where the countervailing duty is higher than the provisional duty or the amount guaranteed by the security required under the provisional measures, only the amount equal to the provisional security given shall be imposed; and
- (b) where the countervailing duty is less than the provisional duty or the amount guaranteed by the security required under the provisional measures, the full amount of the countervailing duty shall be imposed and the excess provisional duty paid or security given shall be reimbursed or released.

(7) Where no countervailing duties are imposed under subsection (5) on the subject products against which the provisional measures were applied, the Minister shall advise the Minister responsible for finance to refund the provisional duty paid and release the security required by the provisional measures.

(8) Notwithstanding subsections (3) and (5), the Minister may, on the advice of the Commission recommend the imposition of retroactive countervailing duties on the subject products imported into Zimbabwe within a period of ninety days prior to the application of provisional measures, but in no case earlier than the date of initiation of the investigation, if—

- (a) the Minister finds prejudice that is difficult to repair;
- (b) such prejudice is being caused by massive imports of the subject products in a relatively short period of time and the Minister considers the retroactive imposition of duties necessary to preclude the recurrence of such prejudice; and
- (c) countervailable subsidies are being provided with respect to the subject products in a manner inconsistent with the provision of the General Agreement on Tariffs and Trade 1994, and the Agreement on Subsidies and Countervailing Measures.

(9) When a countervailing duty is imposed on the subject products, such countervailing duty shall, as provided in the regulations, be imposed in the appropriate amount on a non discriminatory basis on all imports of such products into Zimbabwe from the countries found to be subsidising the subject products.

10. Termination of investigation

(1) Notwithstanding any other provisions of these regulations but subject to subsection (2), an investigation may be terminated at any time when—

- (a) the petitioner withdraws the petition; or
- (b) the Minister determines that such termination is in the public interest.

(2) An investigation shall be terminated immediately if the Commission determines that the amount of countervailable subsidy is negligible or that the volume of subsidised imports, actual or potential, or the prejudice, is negligible.

(3) For the purpose of subsection (2)—

- (a) the amount of countervailable subsidy shall be considered to be negligible if the amount is less than the prescribed percentage, expressed as an ad valorem percentage; and
- (b) the volume of subsidised imports shall be regarded as negligible if the volume of subsidised imports from a particular country is found to account for less than the prescribed percentage of the imports of the like products in Zimbabwe.

(4) If a termination under subsection (1) or (2) occurs prior to the preliminary determination, the Commission shall publish a notice of such termination stating the reasons therefor.

(5) If a termination under subsection (1) or (2) occurs after the preliminary determination, the Commission shall advise the Minister to—

- (a) terminate any provisional measures applied and notify the Commissioner of Customs and Excise to release the security required by such measures; and
- (b) publish a notice of such termination stating the reasons therefor.

11. Suspension of investigation

(1) An investigation may be suspended after an affirmative preliminary determination and if an undertaking acceptable to the commission is given by the person being investigated that the matters leading to the initiation of the investigation will be remedied, the Commission may, with the approval of the Minister, suspend the investigation.

(2) Before accepting the undertakings and approving the suspension of the investigation, the Minister shall determine that such undertakings—

- (a) will eliminate the countervailable subsidy or the injurious effects caused by the subject products;
- (b) can be monitored effectively; and (c) are in the public interest.

(3) If the undertakings are accepted by the Minister, which undertakings shall be accepted only after an affirmative preliminary determination, the Minister shall— (a) request the Commission to suspend the investigation;

- (b) suspend any provisional measures applied under section 8 and refund the provisional duty paid and release the security required by such measures as the Minister may think appropriate; and
- (c) publish a notice stating the reasons for the suspension of the investigation and the actions under paragraph (b).

(4) Notwithstanding the acceptance of the undertakings, the investigation shall be completed upon the written request of the interested foreign government or if the Minister so decides.

(5) Where the Minister completes the investigation under subsection (4) or for any other reason, and makes an affirmative final determination, the undertakings shall remain in effect subject to the provisions of this Act.

(6) Where the Minister completes the investigation under subsection (4) or for any other reason, and makes a negative determination, the undertakings shall lapse, except in circumstances referred to in subsection (7).

(7) Where the negative determination referred to in subsection (6) is due to the existence of the undertakings, the undertakings may be maintained subject to the provisions of these regulations.

(8) The Minister may take any action referred to in subsection (9) or (10) at any time if he determines that— (a) the undertakings accepted under subsection (1) no longer meet the requirements of subsection (2); or (b) there is a material violation of the undertakings.

(9) Where an investigation has not been completed despite subsection (4), the Minister may request the Commission to resume the investigation and take expeditious action to—

- (a) make a preliminary determination under section 7;
- (b) recommend provisional measures in conformity with section 8 if appropriate; and
- (c) make a final determination in terms of section 9 within the prescribed period after the publication of the preliminary determination.

(10) Where an investigation has been completed in terms of subsection (5), the Minister may forthwith issue a final determination in terms of section 9 and recommend the collection of the countervailing duties applicable.

(11) The Minister may use the facts available with respect to any determination referred to subsection (9) where a material violation of the undertakings occurs.

(12) Where the Commission resumes an investigation under paragraph (b) of subsection (8), the Minister may recommend the imposition of countervailing duties in terms of section 9 on the subject products imported into Zimbabwe within a period of ninety days prior to the provisional measures applied under paragraph (b) of subsection (9).

(13) No retroactive assessment under subsection (12) shall be applied to the subject products imported prior to the violation of the undertakings.

12. Review by Minister

(1) Whenever any interested party provides information to the Minister, or the Minister otherwise obtains information, that—

- (a) the amount of countervailable subsidy has changed substantially;
- (b) a refund of the countervailable duty is no longer necessary;
- (c) the imposition of a countervailing duty is no longer necessary;
- (d) an undertaking is no longer necessary or should be modified;

- (e) a countervailing duty or undertaking which is required to be terminated under subsection (7) should be maintained; or
- (f) an expedited review is required for exporters who were not previously investigated; the Minister shall request the Commission to conduct a review if he determines that such review is in the public interest or is required under the Agreement on Subsidies and Countervailing Measures.
- (2) No review shall be undertaken in terms of subsection (1) unless the period prescribed has lapsed.
- (3) If the Commission decides to conduct a review in terms of subsection (1), it shall—
 - (a) publish a notice of the initiation of a review; and
 - (b) conduct such review and allow interested parties an opportunity to provide comments.
- (4) Any review conducted in terms of this section shall be completed within such periods as may be prescribed.
- (5) On the completion of the review, the Commission shall publish a final determination in the review stating the reasons therefor.
- (6) Except in the case of a review under paragraph (f) of subsection (1), any determination made in terms of subsection (5) shall apply to the subject products imported on or after the date of publication of the final determination in the review.
- (7) Countervailing duties shall not be collected on imports made after five years from the date of the publication of the notice of the final determination unless the Minister determines on the basis of a review in terms of this section that the termination of such duties or undertaking would lead to the continuation or recurrence of subsidisation.
- (8) Undertakings shall automatically lapse with respect to imports made five years after the date of publication of the notice of suspension of the investigation.

13. Review by Administrative Court

- (1) An interested party shall have the right of review by the Administrative Court against any— (a) affirmative or negative final determination made in terms of section 9; or (b) final review determination in terms of subsection (5) of section 12.
- (2) An application for review shall be filed within thirty days of the date of the notice of final determination made in terms of section 9 or of the date of publication of the final determination in terms of subsection (5) of section 12.
- (3) The Administrative Court may, upon review, affirm the determination or refer back the matter to the Minister for reconsideration.
- (4) The Minister shall implement any decision of the Administrative Court under subsection (3) PART III

ANTI-DUMPING DUTIES

14. Imposition of anti-dumping duties

- (1) The Minister may, on the evidence furnished by the Commission after completing an investigation recommend the imposition by the Minister responsible for finance of an anti-dumping duty on any subject products imported into Zimbabwe where he determines—
 - (a) that the export price of the subject products is less than normal value; and
 - (b) that prejudice or potential prejudice to any domestic industry is occasioned in either of one of the following ways—
 - (i) the subject products are, through the effects of dumping, causing or threatening to cause material prejudice to the domestic industry in Zimbabwe producing like products;
 - (ii) the subject products are, through the effects of dumping, materially impeding the establishment of the domestic industry producing like products in Zimbabwe.
- (2) In recommending the imposition of an anti-dumping duty the Minister shall specify—
 - (a) an amount equal to the dumping margin determined to exist with respect to the subject products; or
 - (b) an amount less than that referred to in paragraph (a) if the Minister determines that such lower duty will be sufficient to eliminate the prejudice in a particular case.
- (3) For the purposes of this section—
 - (a) the Commission must be satisfied that the subject products are causing prejudice within the meaning of these regulations;
 - (b) any causal relationship between the subject products and the prejudice to the domestic industry shall be based on an examination of all relevant evidence before the Commission;
 - (c) the Commission shall also examine any known factors other than the subject products which at the same time are prejudicing the domestic industry.

15. Normal value

(1) For the purpose of these regulations, the normal value of any subject products shall be the comparable price actually paid or payable in the ordinary course of trade for like products sold for consumption in the domestic market of the exporting country.

(2) Where there are no sales in the domestic market of the exporting country under subsection (1), or where, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, and such sales do not permit a proper comparison, the normal value of the subject products shall be—

- (a) the comparable price actually paid or payable in the ordinary course of trade for like products exported to any appropriate third country, provided that such price is representative; or
- (b) the constructed value of the subject products which shall include the cost of production in the exporting country, plus a reasonable amount for profits.

(3) For the purpose of subsection (2), sales of like products destined for consumption in the domestic market of the exporting country or the appropriate third country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute five per centum or more the sales of the subject products to Zimbabwe:

Provided that a lower ratio shall be acceptable where the evidence shows that domestic sales at such lower ratio are of sufficient magnitude to provide for a proper comparison.

(4) Sales of the like products in the domestic market of the exporting country or sales to a third country at prices below per unit cost of production may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the Minister determines that such sales are made within an extended period of time in substantial quantities and at prices which do not provide for the recovery of all costs within a reasonable period of time.

(5) For the purpose of determining the cost of production referred to in paragraph (b) of subsection (2) and subsection (4), the cost of production shall be computed on the basis of all fixed and variable costs of manufacturing for sale in the exporting country plus a reasonable amount for selling, administrative and other general expenses.

(6) In the circumstances described in subsection (4), the normal value of any subject products may be determined on the basis of—

- (a) the remaining sales in the domestic market made at a price which is not less than the cost of production, provided that such remaining sales are in sufficient quantities; or
- (b) where the sales do not exist in sufficient quantities in the domestic market, the remaining sales in the third country market made at a price which is not less than the cost of production, provided that such remaining sales are in sufficient quantities.

(7) Where the remaining sales are not in sufficient quantities for the calculation of normal value under subsection (6), the normal value of any subject products may be determined on the basis of the constructed value as described in paragraph (b) of subsection (2).

16. Export price

(1) The export price of any subject products shall be the price actually paid or payable for the subject products.

(2) Where there is no export price, or where there is an association or a compensatory arrangement between the exporter and the importer or a third party and it appears that the price actually paid or payable for the subject products is unreliable, the export price may be constructed on the basis of the price at which the subject products are first resold to an independent buyer or not resold in the condition imported, on any reasonable basis.

(3) If the export price is constructed as described in subsection (2), allowance shall be made for all costs incurred between importation and resale.

17. Comparison of normal value and export price

(1) A fair comparison shall be made between the export price and the normal value of any subject products, due allowance being made in each case on its merits for differences which affect price comparability.

(2) The comparison under subsection (1) shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at, as nearly as possible, the same time.

(3) Subject to subsections (1) and (2), the existence of the margin of dumping shall, unless otherwise provided by regulations, normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions of the subject products.

18. Subject products from non-market economy country

Where the country of origin of any subject products is a non-market economy country, the normal value of the subject product shall be determined in the prescribed manner.

19. Initiation of investigation

(1) Any person may, on his own initiative or on behalf of a domestic industry producing like products submit a written petition to the Commission requesting that an anti-dumping duty investigation be initiated with regard to products imported or likely to be imported into Zimbabwe.

(2) The petition shall be in such form as may be prescribed by the Minister and shall include evidence of each of the elements specified in subsection (1) of section 14 and such other evidence that may be relevant or reasonably required by the Minister or the Commission.

(3) The Commission shall, within the period prescribed, review the petition and other available information and determine whether—

(a) sufficient evidence to warrant the initiation of an investigation into whether the elements necessary for the imposition of an anti-dumping duty as provided under subsection (1) of section 14 exists; and (b) such an investigation is in the public interest.

(4) Where the Commission determines that sufficient evidence does not exist to warrant the initiation of an anti-dumping duty investigation or that such an investigation is not in the public interest, the Commission shall as soon as practicable notify the petitioner of its determination not to initiate an investigation.

(5) Where the Commission determines that sufficient evidence exists to warrant the initiation of an antidumping duty investigation and that such an investigation is in the public interest, the Commission shall notify the appropriate interested parties and publish a notice of initiation of investigation in the Gazette.

(6) The Commission may, in special circumstances, initiate an anti-dumping duty investigation on its own accord where in relation to any products imported or likely to be imported into Zimbabwe, it has sufficient evidence of each of the elements specified in subsection (1) of section 14.

(7) Where the Commission decides to initiate an investigation in terms of subsection (6), it shall notify the appropriate interested parties and publish a notice of initiation of investigation in the Gazette.

(8) Notwithstanding any provision in this section, the Commission shall not initiate an investigation unless it has determined on the basis of an examination of the degree of support for, or opposition to, any written petition submitted under subsection (1) that—

(a) the written petition is supported by domestic producers of like products whose collective output constitutes more than fifty per centum of the total production of the like products produced by that portion of the domestic industry expressing either support for or opposition to the written petition; and

(b) the domestic producers of like products expressly supporting the written petition account for not less than twenty-five per centum of the total production of the like products produced by the domestic industry.

(9) For the purposes of subsection (8), in the case of fragmented industries involving an exceptionally large number of producers, the Commission may determine the support and opposition by using statistically valid sampling techniques.

20. Duration of investigation

(1) All anti-dumping duty investigations shall, except in special circumstances, be concluded by the Commission within one year, and in no case not later than eighteen months after initiation of investigations.

21. Preliminary determination of dumping and prejudice

(1) The Commission shall, within such period as may be prescribed, make a preliminary determination regarding—

(a) whether a dumping margin exists with respect to the subject products, and the amount of such a margin; and

(b) whether injury is found to exist in any one of the following ways—

(i) the subject products are, through the effects of dumping, causing or threatening to cause material prejudice to the domestic industry in Zimbabwe producing like products;

(ii) the subject products are, through the effects of dumping, materially impeding the establishment of the domestic industry for the production of like products in Zimbabwe.

(2) If the Commission makes a negative preliminary determination under subsection (1), it shall publish a notice stating the reasons therefor and may terminate the investigation if the Commission is satisfied that there is insufficient evidence of either dumping or of prejudice to justify proceeding with investigation.

(3) If the Commission makes an affirmative preliminary determination under subsection (1), it shall continue the investigation and publish a notice of—

(a) the affirmative preliminary determination stating the reasons for his determination under paragraphs (a) and (b) of subsection (1); and

(b) the provisional measures applicable.

22. Provisional measures

(1) On or after the publication of the notice referred to in subsection (3) of section 21 the Minister may, if he considers that such measures are necessary to prevent the prejudice referred to in paragraph (b) of subsection (1) of section 21 from occurring during the period of the investigation shall recommend the application of provisional measures with regard to the subject products imported into Zimbabwe on or after the publication of the notice of affirmative preliminary determination where the Minister determines that such measures are necessary to prevent the injury referred to in paragraph (b) of subsection (1) of section 21 from occurring during the period of investigation.

(2) Provisional measures shall not be imposed sooner than 60 days from the date of initiation of the investigation.

(3) Provisional measures shall take the form of a provisional duty or a security equal to the amount of the estimated dumping margin determined under subsection (1) of section 21.

(4) Provisional measures imposed under this section shall not exceed such period as may be prescribed.

23. Final determination of dumping and prejudice

(1) The Commission shall, within such period as may be prescribed, make a final determination regarding—

(a) whether a dumping margin exists with regard to the subject products, and the amount of such margin; and

(b) whether—

(i) the subject products are, through the effects of dumping, causing or threatening to cause material prejudice to the domestic industry in Zimbabwe producing like products; or

(ii) the subject products are, through the effects of dumping, materially impeding the establishment of the domestic industry in Zimbabwe.

(2) Where the Commission makes a negative final determination under subsection (1), it shall— (a) terminate the investigation;

(b) advise the Minister to terminate any provisional measures applied in terms of section 22 and refund any provisional duty paid and notify the Commissioner of Customs and Excise to release any security required by such measures; and

(c) publish a notice of the negative final determination stating the reasons therefor.

(3) Where the Commission makes an affirmative final determination under subsection (1), it shall— (a) publish a notice of the affirmative final determination stating—

(i) the reasons therefor;

(ii) the anti-dumping duties applicable;

(iii) the subject products on which the anti-dumping duties apply; and

(b) advise the Minister to recommend the imposition of anti-dumping duties in the amounts determined in the final determination in accordance with subsection (2) of section 14 on the subject products imported into Zimbabwe on or after the date of publication of the final determination; and

(c) impose anti-dumping duties in accordance with subsections (5) and (6) on imports into Zimbabwe for which provisional measures were applied

(4) Where an affirmative final determination has been made, the Minister may take into consideration the public interest in determining whether or not to accept the recommendation of the Commission to request the Minister responsible for finance to impose anti-dumping duties and the amount of such duties.

(5) The Minister shall impose anti-dumping duties on the subject products against which provisional measures were applied if the Minister—

(a) agrees with determination of material prejudice by the Commission made in terms of subparagraph (i) of paragraph (b) of subsection (1); or

(b) makes a determination of threat of material prejudice under subparagraph (ii) of paragraph (b) of subsection (1) and finds that the import of the subject products, in the absence of the provisional measures, would have led to a finding of material prejudice under subparagraph (i) of paragraph (b) of subsection (1).

(6) With respect to the imposition of any anti-dumping duty under subsection (5)—

(a) where the anti-dumping duty is higher than the provisional duty or the amount guaranteed by the security required under the provisional measures, only the amount equal to the provisional duty or the security given shall be imposed; and

(b) where the anti-dumping duty is less than the provisional duty or the amount guaranteed by the security required under the provisional measures, the full amount of anti-dumping duty shall be imposed and the excess amount of the provisional duty paid or security given shall be reimbursed or released.

(6) Where no anti-dumping duties are imposed under subsection (5) on the subject products against which the provisional measures were applied, the Minister shall refund the provisional duty paid and release the security required by the provisional measures.

(7) Notwithstanding subsections (3) and (5), the Minister may, on the advice of the Commission, recommend the imposition of retroactive anti-dumping duties on the subject products imported into Zimbabwe within a period of ninety days prior to the application of provisional measures, but in no case earlier than the date of the initiation of the investigation, if—

(a) there is a history of dumping which caused prejudice, or the importer was or should have been aware that the exporter practices dumping and that such dumping would cause prejudice; and

(b) the prejudice is caused by massive dumped imports of the subject products in a relatively short period of time which in the light of the timing and the volume of such imports and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty to be imposed.

24. Termination of investigation

(1) Notwithstanding anything in these regulations but subject to subsection (2), an investigation may be terminated at any time when—

- (a) the petitioner withdraws the petition; or
- (b) the Commission determines that such termination is in the public interest.

(2) An investigation shall be terminated immediately if the Commission determines that the margin of dumping is negligible or that the volume of imports of the subject products, actual or potential, or the injury, is negligible.

(3) For the purpose of subsection (2)—

- (a) the margin of dumping shall be considered to be negligible if the margin is less than two per centum, expressed as a percentage of the export price; and
- (b) the volume of imports of the subject products shall normally be regarded as negligible if the volume of imports of the subject products from a particular country is found to account for less than three per centum of imports of the like products into Zimbabwe, unless the subject products from countries which individually account for less than three per centum of imports of the like products in Zimbabwe collectively account for more than 7 per centum of imports of the like products into Zimbabwe.

(4) If a termination referred to in subsection (1) or (2) occurs prior to the preliminary determination, the Commission shall publish a notice of such termination stating the reasons therefor.

(5) If a termination referred to in subsection (1) or (2) occurs after the preliminary determination, the Commission shall advise the Minister to—

- (a) request the termination of any provisional measures referred to in section 22 and the refund of the provisional duties paid or notify the Commissioner of Customs and Excise to release the security required by such measures; and
- (b) publish a notice of such termination stating the reasons therefor.

25. Suspension of investigation

(1) An investigation may be suspended with the approval of the Minister if any undertaking acceptable to the Commission is given by the person being investigated that the matters leading to the initiation of the investigation will be remedied.

(2) Before approving the suspension of the investigation, the Minister shall determine that such undertakings—

- (a) will eliminate the dumping margin or the injurious effects caused by the subject products;
- (b) can be monitored effectively; and (c) are in the public interest.

(3) If the undertakings are acceptable, the Minister shall—

- (a) approve the suspension of the investigation;
- (b) request the suspension of any provisional measures applied under section 22 and the refund of the provisional duty paid and notify the Commissioner of Customs and Excise to release the security required by such measures as the Minister may think appropriate; and
- (c) publish a notice stating the reasons for the suspension of the investigation and the actions under paragraph (b).

(4) Notwithstanding the acceptance of the undertakings, the investigation shall be completed upon the written request of the exporters of the subject products or if the Minister so decides.

(5) Where the Commission completes the investigation under subsection (4) or for any other reason, and makes an affirmative final determination, the undertakings shall remain in effect subject to the provisions of these regulations.

(6) Where the Commission completes the investigation under subsection (4) or for any other reason, and makes a negative determination, the undertakings shall lapse, except in circumstances referred to in subsection (7).

(7) Where the negative determination referred to in subsection (6) is due in large part to the existence of the undertakings, the undertakings may be maintained subject to the provisions of these regulations.

(8) The Minister may take any action in terms of subsection (9) or (10) at any time if he determines that— (a) the undertakings accepted under subsection (1) no longer meet the requirements of subsections (2); or (b) there is a material violation of the undertakings.

(9) Where an investigation has not been completed despite subsection (4), the Minister may request the Commission to resume the investigation and take expeditious action to—

- (a) make a preliminary determination under section 21;
- (b) recommend appropriate provisional measures in conformity with section 22; and
- (c) make a final determination under section 23 within one hundred and twenty days after the publication of the preliminary determination.

(10) Where an investigation has been completed under subsection (5), the Minister may immediately issue a final determination under section 23 and request the collection of the anti-dumping duties applicable.

(11) The Minister may use the facts available with respect to any determination under subsection (9) or (10) where a material violation of the undertakings occurs under paragraph (b) of subsection (8).

(12) Where the Minister requests the Commission to resume an investigation under paragraph (b) of subsection (8) the Minister may request the imposition of anti-dumping duties in conformity with section 23 on the subject products imported into Zimbabwe within a period of ninety days prior to the provisional measures applied under paragraph (b) of subsection (9).

(13) No retroactive assessment under subsection (12) shall be applied to the subject products imported prior to the violation of the undertakings.

26. Review by Minister

(1) Whenever any interested party provides information to the Minister, or the Minister otherwise obtains information, that—

- (a) the dumping margin has changed substantially;
- (b) a refund of an anti-dumping duty is appropriate;
- (c) the imposition of an anti-dumping duty is no longer necessary;
- (d) an undertaking is no longer necessary or should be modified;
- (e) an anti-dumping duty which is required to be terminated under subsection (7) should be maintained; or
- (f) an expedited review is required for exporters or producers who did not export the subject products to Zimbabwe during the period of investigation, the Minister shall request the Commission to conduct a review if he determines that such review is in the public interest or is required under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

(2) No review shall be undertaken under subsection (1) unless the period prescribed has lapsed.

(3) If the Commission is requested to conduct a review under subsection (1), it shall—

- (a) publish a notice of the initiation of a review; and
- (b) conduct such review and allow interested parties an opportunity to provide comments.

(4) Any review conducted in terms of this section shall be completed within such period as may be prescribed.

(5) On completion of the review, the Commission shall publish a final determination in the review stating the reasons therefor.

(6) Except in the case of a review for a refund under paragraph (b) of subsection (1) or an expedited review under paragraph (f) of subsection (1), any determination made in terms of subsection (5) shall apply to the subject products imported on or after the date of publication of the final determination in the review.

(7) Anti-dumping duties shall not be collected on imports made after five years from the date of publication of the notice of the final determination and undertakings shall automatically lapse with respect to imports made after five years from the date of publication of the notice of suspension of investigation, unless the Minister determines on the basis of a review under this section that the termination of such duties or undertaking likely lead to continuation or recurrence of dumping and prejudice.

27. Review by Administrative Court

(1) An interested party shall have the right of review by the Administrative Court against any—

- (a) affirmative or negative final determination made in terms of section 23; or (b) final review determination under subsection (5) of section 26.

(2) An application for review shall be filed within thirty days of the date of the notice of affirmative or negative final determination made in terms of section 23 or of the date of the final review determination made in terms subsection (5) of section 26.

(3) The Administrative Court may, upon review, affirm the determination or refer back the matter to the Commission for reconsideration.

(4) The Minister shall implement any decision of the Administrative Court under subsection (3).

PART IV

ADMINISTRATION

28. Administrative matters

(1) Subject to the provisions of these regulations, any investigation or action to be conducted or taken in terms of these regulations shall be conducted or taken by any person authorised in writing by the Minister.

(2) If any question arises as to whether any particular products are or are not included in any notification given under this Act or any regulations made thereunder, the Minister shall determine the scope of the notification after giving interested parties an opportunity to comment on the scope of the notification.

29. Delegation

The Minister may by writing delegate to any person, either generally or otherwise, all or any of his powers and functions under these regulations except his powers granted to him in paragraph (b) of subsection (3) of section 9, section 14, paragraph (b) of subsection (3) of section 23, subsection (4) of section 24 and section 46, and any reference in these regulations to the Minister shall, unless the context otherwise requires, include a reference to a person to whom the Minister has delegated some of his powers..

PART V

GENERAL

30. Currency conversion.

(1) If, for the purposes of these regulations, the comparison of the export prices of products exported to Zimbabwe and corresponding normal values of like products requires a conversion of currencies, that conversion, subject to subsections (3) and (5), shall be made using the rate of exchange on the date of sale.

(2) The date of sale shall, in so far as is appropriate, be the date of contract, purchase order, order confirmation or invoice as determined by the Minister.

(3) If, in relation to products exported to Zimbabwe, a forward rate of exchange is used, the Minister shall in any conversion of currencies under subsection (1), use that rate of exchange.

(4) If—

(a) the comparison referred to in subsection (1) requires the conversion of currencies; and

(b) the rate of exchange between those currencies has undergone a short-term fluctuation; the

Minister shall, for the purposes of that comparison, disregard that fluctuation.

(5) If—

(a) the comparison referred to in subsection (1) requires the conversion of currencies; and

(b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement during the period of investigation. the Minister shall allow exporters at least sixty days to adjust their export prices to reflect the sustained movement.

31. Notice of information required and opportunity to present evidence

(1) All interested parties in a countervailing or anti-dumping duty investigation or review shall be given notice of the information required by the Minister and opportunities to present all evidence they consider relevant.

(2) The Commission shall, whenever practicable, provide timely opportunities for all interested parties to see information submitted that is not confidential and which is relevant to the presentation of their case.

(3) Throughout a countervailing or anti-dumping investigation or review, all interested parties shall have a full opportunity for the defence of their interests.

(4) The Commission shall, on request, provide timely opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered.

(5) Provision of such opportunities shall take account of the need to preserve confidentiality and of the convenience on the parties.

(6) There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.

(7) Interested parties shall also have the right, on justification, to present other information orally which shall be reproduced in writing.

(8) The Commission shall, before a final determination is made in an investigation or review, inform all interested parties of the essential facts under consideration which form the basis for the decision.

32. Submission of confidential information

(1) Any information which is by its nature confidential, or any information which is provided on a confidential basis to the Minister, the Commission or any other person authorised by the Minister shall, be treated as such by the Minister, Commission and any person having access to such information.

(2) The confidential nature of a document shall not be used as a reason for refusing to provide it to the Minister, the Commission or any person authorised by the Minister.

(3) The Minister and the Commission shall be responsible for ensuring the confidentiality of such documents.

(4) Confidential information shall not be disclosed without specific written permission from the party submitting the confidential information.

(5) The Minister or the Commission shall require parties providing confidential information to furnish nonconfidential summaries that are sufficient in detail to permit reasonable understanding of the substance of the confidential information.

(6) Where such parties indicate that such information is not susceptible of summary, a statement of reasons why summarisation is not possible shall be provided.

(7) The Minister or the Commission may disregard information presented if—

- (a) the Minister or the Commission finds that a request for confidentiality under subsection (1) is not warranted and the supplier of the information nevertheless is unwilling to make the information public;
- (b) the non-confidential summaries as required under subsection (5) are not in sufficient detail; or
- (c) the reasons given for not providing non-confidential summaries under subsection (6) are inadequate and the supplier of the information nevertheless refuses to provide non-confidential summaries.

33. Directions by Minister

The Minister may give to the Commissioner of Customs and Excise, any public officer or any officer of any statutory board such written directions in connection with the carrying out or giving effect to the powers and duties of the Minister under these regulations as the Minister thinks fit.

34. Facts available

Where any interested party denies access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes an investigation or review, including refusal to allow verification of its information, preliminary and final determinations may be made on the basis of the facts available.

35. Other practices discovered during investigation or review

(1) If, in the course of an anti-dumping investigation or review, the Commission discovers practices which appear to be dumping but which were not included in the matters alleged on the petition, the Minister may, if there is sufficient time, investigate those practices.

(2) If, in the course of a countervailing duty investigation or review, the Commission discovers practices which appear to be countervailable but which were not included in the matters alleged in the petition, the Minister may, if there is sufficient time, investigate those practices.

36. Conduct of investigations where no international obligations apply

When no applicable international obligation on countervailing and anti-dumping duties exists between Zimbabwe and any interested foreign government, the Minister may take such action as may be prescribed.

37. Transshipment

Where products are not imported into Zimbabwe directly from an intermediate country, the provisions of the Act and any regulations made thereunder shall be fully applicable and the transactions, for the purposes of the Act and those regulations, shall be regarded as having taken place between the country of origin and Zimbabwe.

38. Double counting not permitted

No products shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping and subsidisation.

39. Obligation of secrecy

(1) No person who has access to any statement, accounts, record, correspondence, document, information or any other material obtained pursuant to the provisions of these regulations shall disclose such statement, accounts, record, correspondence, document, information or other material to any other person unless such disclosure is—

- (a) authorised by the Minister; or
- (b) made for the purposes of these regulations.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

40. Repeals

(1) The Customs and Excise (Anti-Dumping and Countervailing Duty) (Investigation) Regulations 1984, published in Statutory Instrument 429 of 1984, are repealed.