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**CONTENTS • INHOUD**

*No.*

*Page  
No.      Gazette  
          No.*

**GENERAL NOTICE**

**Trade and Industry, Department of**

*General Notice*

1867 International Trade Administration Amendment Bill, 2002: For public comment ..... 3 28137

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## GOVERNMENT NOTICE

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### DEPARTMENT OF TRADE AND INDUSTRY

No. 1867

14 October 2005

### INTERNATIONAL TRADE ADMINISTRATION AMENDMENT BILL

The draft International Trade Administration Amendment Bill, is hereby published for public comment. Comments should be submitted in writing to:

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International Trade Administration Commission  
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Written comments must be received no later than 04 November 2005.

REPUBLIC OF SOUTH AFRICA

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INTERNATIONAL TRADE ADMINISTRATION AMENDMENT BILL

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*(As introduced in the National Assembly as a section 76 Bill; explanatory  
summary of Bill published in Government Gazette No. \*\* of \*\*)  
(The English text is the official text of the Bill)*

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(MINISTER OF TRADE AND INDUSTRY)

**GENERAL EXPLANATORY NOTE:**

[            ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

**To amend the International Trade Administration Act, 2002, so as to provide for the.....**

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

**Amendment of section 1 of Act 71 of 2002**

1. Section 1 of the International Trade Administration Act, 2002 (hereinafter referred to as the principal Act), is hereby amended-
  - (a) by the substitution for the definition of "National Body" of the following definition:

"National Body" means a body or institution established or designated by a Member State, as contemplated in Article 14 of the SACU Agreement;"
  - (b) by the substitution for the definition of "SACU" of the following definition:

"SACU" means the Southern African Customs Union established by Article 3 of the SACU Agreement;"
  - (c) by the substitution for the definition of "SACU Commission" of the following definition:

"SACU Commission" means the Customs Union Commission established by Article 7 of the SACU Agreement;"

(d) by the substitution for the definition of "SACU Council" of the following definition:

"SACU Council" means the Council of Ministers established by Article 7 of the SACU Agreement:";

(e) by the substitution for the definition of " SACU Tribunal" of the following definition:

"SACU Tribunal" means the Tribunal established by Article 7 of the SACU Agreement:";

(f) by the substitution for the definition of "safeguard measure" of the following definition:

"safeguard measure" means a remedy [or procedure] for use in response to disruptive competition." and

(g) by the substitution for the definition of "Tariff Board" of the following definition:

"Tariff Board" means the SACU Tariff Board established by Article 7 of the SACU Agreement:";

#### **Amendment of section 4 of Act 71 of 2002**

2. Section 4 of the principal Act is hereby amended by the deletion in subsection (7) of paragraph (a).

#### **Amendment of section 10 of Act 71 of 2002**

3. Section 10 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A member of the Commission must comply with **[any prescribed]** a code of conduct **[for members]** adopted by the Commission.”.

**Amendment of section 12 of Act 71 of 2002**

4. Section 12 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[ A majority of the ]** Three members of the Commission present at a meeting of the Commission **[ forms]** form a quorum.”.

**Amendment of section 15 of Act 71 of 2002**

5. Section 15 of the principal Act is hereby amended-

- (a) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“ The Commission may, **[subject to section 14(5)]** assign any of its functions to –”and

- (b) by the insertion after subsection (4) of the following subsection:

“(5) When the Commission assigns any of its functions in terms of subsection (4), the person or committee to whom the function has been assigned must periodically report to the Commission on the execution of that function.”.

**Amendment of section 16 of Act 71 of 2002**

6. Section 16 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) applications in terms of section 26 with regard to amendment of customs duties and creation or amendment of rebate provisions in the Common Customs Area; and.”

**Amendment of section 24 of Act 71 of 2002**

7. Section 24 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) [The] Auditors approved by the Auditor-General must each year audit the financial records of the Commission.”

**Amendment of section 26 of Act 71 of 2002**

8. Section 26 of the principal Act is hereby amended -

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A person may, in the [prescribed] requisite manner and form, apply to the Commission for -” and

(b) by the insertion in subsection (1) of the following paragraph:

“(e) an amendment of Schedule 3, 4 or 5 to the Customs and Excise Act, 1964 (Act No. 91 of 1964).”

**Amendment of section 31 of Act 71 of 2002**

9. Section 31 of the principal Act is hereby amended by the insertion after paragraph (b) of subsection (2) of the following paragraph:

“(c) investigate an application for a customs duty amendment received by that member state and to make recommendations on the matter to the tariff board or the relevant national body.”.

**Amendment of section 32 of Act 71 of 2002**

10. Section 32 of the principal Act is hereby amended –

- (a) by the substitution in subsection (2) for subparagraph (i) of paragraph (b) of the following subparagraph:

“(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 sold by the exporter, or, if the like goods are not sold by the exporter, by another seller or seller of the like goods or;”.

- (b) by the substitution in subsection (2), for subparagraph (bb) of paragraph (b)(ii) of the following subparagraph:

"(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]** by the exporting country or the country of origin to an appropriate third country."

(c) by the substitution for subsection (4) of the following subsection:

"(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 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]** a particular market situation exists in the exporting country or the country of origin that makes the determination of the normal value as contemplated in subsection 2(b)(i) inappropriate, the Commission may determine the normal value with reference to –

- (a) either of the methodologies as set out in subsection 2(b)(ii);
- (b) the factors of production of the exporter or foreign manufacturer priced in that country or in a third country;
- (c) the normal value determined for a third or surrogate country; or
- (d) any other reasonable basis."

(d) by the substitution for subsection (5) of the following subsection:

“(5) The Commission [must, despite the definition of “export price” set out in subsection (2),] may 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.”.

(e) by the insertion of the following subsections:

“(7) No anti-dumping or countervailing duty may be imposed unless the Commission has found that the dumping or subsidised export of goods in question has caused or is threatening to cause material injury to the SACU industry, or is materially retarding the establishment of an industry in SACU.”.

(8) (i) A definitive anti-dumping or countervailing duty shall expire-

- a) five years from the date of the publication of the final determination; or
- b) five years from the conclusion of the most recent review which has covered both dumping, subsidisation or injury,  
unless it is determined in a review that the expiry would probably result in a continuation or recurrence of dumping, subsidisation or injury.

(ii) Where a review, to determine the probability of a continuation or recurrence of dumping, subsidisation or injury, as referred to in subparagraph (i) has been

initiated before the expiry of the aforesaid period of five years and the review has not been concluded before such expiry, the anti-dumping or countervailing duty shall remain in force pending the outcome of such a review.

(9) The need for the continued imposition of anti-dumping or countervailing duties may be reviewed, where justified, on the initiative of the Commission, provided that at least one year has elapsed since the imposition of the definitive anti-dumping or countervailing duty, upon a request by any exporter, importer or by the SACU producers which contains sufficient evidence of the changed circumstances substantiating the need for such an interim review.

(10) A review may be carried out for the purpose of determining individual margins of dumping or subsidisation for new exporters in an exporting country which have not exported the product, subject to an anti-dumping or countervailing duty, during the period of investigation on which the anti-dumping or countervailing duty were based.

(11) In conducting reviews where no exports to SACU took place during the period of investigation, the export price will be the comparable price of the like product when exported by the exporting country to a third country.

(12) Where the Minister, on the recommendation of the Commission, at any time before making a final determination is satisfied in respect of some or all of the products under investigation that the application for the investigation has

been withdrawn in writing by those producers by or on whose behalf the application was made, the Minister may terminate the investigation with respect to those goods.”.

#### **Amendment of section 33 of Act 71 of 2002**

**11. Section 33 of the principal Act is hereby amended-**

- (a) by the substitution in subsection 2(b) for subparagraph (ii) of the following subparagraph:

“(ii) if it is claimed that the information is not susceptible to a written abstract as referred to in subsection 2(b)(i), a statement of the reasons why such abstract is not possible.”.

- (b) by the insertion after subsection (2) of the following subsection:

“(3) The Commission may disregard any information for which the party submitting it fails to provide either a satisfactory written abstract or satisfactory reasons why such abstract can not be provided.”.

#### **Repeal of section 34, 35, 36 and 37 of Act 71 of 2002**

12. Sections 34, 35, 36 and 37 of the principal Act are hereby repealed.

#### **Amendment of section 48 of Act 71 of 2002**

**13. Section 48 of the principal Act is hereby amended –**

- (a) by the insertion in subsection (1) of the following paragraph:

“(d) to give effect to a decision by a World Trade Organization Panel or Appellate Body decision to which South Africa is a party.”. and

(b) by the insertion of the following subsection :

“(2) Parties affected by an action referred to in subsection (1) shall be afforded an opportunity to comment on the matter.”.

#### **Insertion in section 54 of Act 71 of 2002**

**14.** The following paragraph and subsection are hereby inserted in the principal Act after paragraph (g) of subsection (2):

“(h) in any manner, otherwise than at a public sale, acquire or receive into possession illegally imported goods from any other person without having reasonable cause for believing at the time of such acquisition or receipt that such goods were lawfully imported into the Republic.

(3) For the purposes of subsection (2)(h) above, in the absence of evidence to the contrary raising reasonable doubt, proof of possession shall be sufficient evidence of the absence of reasonable cause.”.

#### **Insertion of section 55A and 55B in Act 71 of 2002**

**15.** The following sections is hereby inserted in the principal Act after section 55:

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**“Disposal of abandoned and unclaimed seized goods ”**

**55A.** Where the Commission on reasonable grounds determines that –

- (a) any goods have been imported or exported in contravention of this Act;
- (b) the importer or exporter of such goods can not be identified;
- (c) no valid claim to such goods has been made by any party.

such goods shall be deemed to be abandoned and forfeited to the State.

**“Possession of illegally imported goods ”**

**55B.** Where the Commission on reasonable grounds determines that any goods have been imported or exported in contravention of this Act, the continued possession of such goods will be unlawful.

**Short title**

**16.** This Act is called the International Trade Administration Amendment Act, 2005

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