Statutory Instrument No. 29 of 2025

BOTSWANA TRADE COMMISSION ACT
(Cap. 42:14)

BOTSWANA TRADE COMMISSION (COUNTERVAILING INVESTIGATION) REGULATIONS, 2025

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

PART I — *Preliminary*

Citation

1. These Regulations may be cited as the Botswana Trade Commission (Countervailing Investigation) Regulations, 2025.

Interpretation

2. In these Regulations, unless otherwise the context requires —

"anti-circumvention "means a review undertaken in a case where an alleged countervailing duty is being circumvented;

"countervailing measure" means a special measure imposed for the purpose of offsetting the subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise;

"day" means any day other than a Saturday, Sunday or any day which is a public holiday under the Public Holidays Act; Cap. 03:07

"*de minimis*" means a subsidy margin of less than one per cent *ad valorem* or where the investigation concerns a product from a developing country, two per cent *ad valorem*;

"facts available" means the information that is available to the Commission at the time of making a determination, whether preliminary or final;

"interested party" means —

(*a*) a producer in SACU;
(*b*) an exporter;
(*c*) a foreign producer;
(*d*) an importer;
(*e*) a trade or business association whose members are —
  (i) SACU producers, exporters or importers, or
  (ii) foreign producers, exporters or importers; or
(*f*) the Government of the country of origin and of export of the product under investigation;

"interim review" means an investigation to determine whether an existing countervailing duty should be varied or revoked due to a change of circumstances;

"investigation period for a subsidy" means a period for which the exports from the country under investigation benefitted from subsidies, which period shall be 12 months or more;

"investigation period for injury" means a period for which it is assessed whether the SACU industry experienced material injury from the subject product alleged to be subsidised;

"lesser duty" means the provisional payment or countervailing duty imposed at the lesser margin of subsidy or the margin of injury which is deemed to be sufficient to remove the injury caused by the subsidised export;

"like product" means —

(*a*) a product which is identical or alike to theproduct under investigation; or

(*b*) in the absence of such a product, another product that has characteristics closely resembling those of the product under investigation;

"margin of subsidy" means the total value of a subsidy of a product under investigation;

"material injury", means the economic effects of the subsidised imports on the SACU industry determined by either price undercutting, price depression or price suppression, or injury that has been caused to the SACU industry which is not negligible;

"material retardation" means a standard of determining the injury to the establishment of the SACU industry as opposed to the actual injury or threat of material injury;

"new-shipper review" means a review undertaken to determine the subsidy margin for a new producer or exporter who did not export, and is not related or affiliated with an exporter or producer that exported to SACU during the original investigation period;

"price disadvantage" means the extent to which the price of the imported product is lower than the unsuppressed selling price of the like product produced by the SACU industry, as measured at the appropriate point of comparison;

"price suppression" means where the —

(*a*) cost-to-price-ratio of the SACU industry increases; or

(*b*) SACU industry sells at a loss during the investigation period;

"price undercutting" means the price of the imported product which is lower than the price of the like product produced by the SACU industry, as measured at the appropriate point of comparison;

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

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

"subsidies agreement" means the Agreement on Subsidies and Countervailing Measures of the World Trade Organization which provides the rules for the use of Government subsidies for the application of the remedies to address the subsidies trade that has harmful commercial effects;

"subject-product" means a product under consideration or investigation in the application for investigation;

"sunset review" means an investigation to determine whether there is a likelihood that the removal of the existing countervailing duty would lead to a continuation or reoccurrence of an injurious effect;

"third country" means any country outside SACU that is neither the export or the foreign producer's country; and

"unsuppressed selling price" is the price at which the SACUindustry would have been able to sell the like products in question in the absence of subsidised exports.

PART II — *Application for Investigation*

Application for investigation

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

(2) An application referred to under subregulation (1), shall be in Form A set out in the Schedule and accompanied by an application fee of P 500.

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

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

(*a*) at least 25 per cent of the SACU producers by domestic production volume supports the application; and

(*b*) of those producers that express an opinion, at lenst 50 per cent by domestic production volume support the application.

(5) An application shall include evidence of —

(*a*) a subsidy;

(*b*) an injury; and

(*c*) the causal link between subsidised imports and the injury to the SACU industry.

(6) The Commission may amend the questionnaire when needs arises, in a particular manner as it may be required or may forgo, in whole or in part, for the purposes of the use of the questionnaire:

Provided that an applicant provides the Commission with the sufficient information to allow the Commission to understand the nature and the basis for the requested information.

Evidence and information required in application

4. An application for investigation shall include —

(*a*) the name, address and telephone number of the applicant;

(*b*) the volume and value of SACU like product produced by the applicant and by any other identified SACU producer;

(*c*) a description of the allegedly subsidised product including the technical characteristics and uses of the product and the product's current tariff classification number;

(*d*) the country in which the alleged subsidised product is manufactured or produced, where it is imported from a country other than the country of manufacturer or production, the intermediate country from which the product is or imported;

(*e*) the name and address of each person the applicant believes sells the allegedly subsidised product and the proportion of total exports to SACU;

(*f*) the evidence with regard to the existence, amount and nature of the subsidy; and

(*g*) a causal link between the subsidised imports and the alleged injury to the SACU industry.

Acknowledgment of receipt of application

5. (1) The Commission shall, in writing, acknowledge receipt of the application under regulation 3, within five days of receipt of such application.

(2) The Commission shall include details of the assigned lead investigating officer in the acknowledgment letter.

Compliance assessment of application

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

(*a*) the application is not in the manner and form set out by the Commission;
(*b*) the required information under regulation 4 has not been provided in full; and
(*c*) the application contains confidential information and the applicant has failed to provide a non-confidential version in accordance with regulation 7.

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

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

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

(5) Where the Board, using the information reasonably available determines that —

(*a*) there is insufficient evidence of a subsidy, injury or causal link;
(*b*) the volume of imports of the allegedly subsidised product from a country into SACU is negligible; or
(*c*) the subsidy margin or the rate of subsidisation is *de minimis*,

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

(6) The Commission shall evaluate an application for investigation and where the Commission rejects the application, he or she shall notify the applicant of the reasons why the application was rejected.

(7) Where the Commission approves the application, the Commission shall submit a preliminary recommendation to initiate an investigation to the Board.

Confidentiality

7. (1) An applicant or any interested party who provides confidential information in any correspondence, shall —

(*a*) furnish non-confidential information in summary to the Commission; and
(*b*) indicate in detail the reasons for confidentiality.

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

(3) The Commission shall keep confidential information which —

(*a*) by nature is confidential;
(*b*) if disclosed, could have a significant adverse effect upon the owner of or a person supplying the information; and
(*c*) was provided on a confidential basis by the parties to the investigation.

(4) The following information shall be deemed to be confidential, if such information —

(*a*) concerns the financial condition of a company which is not publicly available, including —
  (i) management accounts,
  (ii) financial accounts of a private company,
  (iii) actual and individual sales prices,
  (iv) actual costs, including cost of production and importation cost, and

(v) actual sales volume, the release of which could have significant adverse effect on the owner of, or the person that provided the information;

(*b*) concerns the cost, identification of customers, sales, inventory, shipment, amount or source of any income, profit, loss or expenditure related to the owner of or the person that provided the information; or

(*c*) would be of significant competitive advantage to a competitor of the owner of the information.

(5) The Commission shall —

(*a*) notify an applicant where a request for confidential treatment is not warranted; and

(*b*) state, in writing, reasons for refusal to treat information submitted by an applicant as confidential.

(6) The Commission may disregard any information indicated as confidential, that is not accompanied by a non-confidential summary.

(7) An applicant aggrieved by a decision of the Commission under this regulation, may appeal to the Minister, within 14 days from the date of the Commission's decision.

(8) The Commission may not disregard any information indicated to be confidential until the Minister determines the application made under subregulation (7) or until the 14 days have elapsed with no application being made to the Minister.

Notification of receipt of application for investigation

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

Notification after Board approval to initiate investigation

9. (1) Where the Board approves the recommendation to initiate the investigation, the Commission shall —

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

(*b*) provide an interested party with relevant documentation inclusive of the non-confidential version of the application.

(2) The Commission shall publish a Notice to initiate investigation in the *Gazette* to allow interested parties to comment, within four weeks of publication of such Notice.

(3) The notice published in the *Gazette* shall include the following —

(*a*) the name, address and telephone number of the applicant;

(*b*) the nature of the application and its reference number;

(*c*) the name and contact details of the assigned investigating officer;

(*d*) the name of the country of export and the country of origin, of the investigated product;

(*e*) a complete description of the investigated product, including the technical characteristics and uses of the product and the product's current tariff classification number;

(*f*) a description of the alleged subsidy practice to be investigated;

(*g*) a summary of the factors on which the allegations of injury and causal link are based;

(*h*) the address where information and comments should be submitted;

(*i*) the date of initiation of the investigation;

(*j*) the proposed schedule for the investigation; and

(*k*) the time period for publication and due date for comments.

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

Response to initiation notice by interested party

10. (1) The Commission shall issue a questionnaire, in a format to bedetermined by the Commission, to an interested party so that the interested party may note its response to the public Notice referred to under regulation 9 (2).

(2) An interested party shall be deemed to have received the questionnaire under subregulation (1), seven days after the dispatch of the questionnaire by the Commission.

(3) An interested party shall on receipt of the questionnaire under subregulation (1), respond to the Commission within 30 days.

(4) An interested party not directly informed of the investigation by the Commission shall, submit the questionnaire to the Commission within 40 days, from the date of the initiation of such investigation.

(5) A response by an interested party shall be in writing and submitted in a format to be determined by the Commission.

(6) The Commission shall treat responses that are not indicated confidential as non-confidential.

(7) The Commission may render any submissions by interested parties as deficient where the submissions do not comply with the provisions of this regulation.

Deficient response by interested party

11. (1) An interested party shall within seven days from the date of receipt of a questionnaire, address any deficiencies noted by the Commission.

(2) The Commission shall not consider any deficient submissions after the deadline indicated under subregulation (1), for the purpose of its preliminary finding to the Board.

Extensions for submission of response

12. (1) The Commission may grant parties an extension of time for submission of responses on good cause shown by an interested party.

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

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

PART III — *Investigation process*

Investigation

13. (1) An investigation shall be initiated by the Commission upon acceptance of a written application under regulation 3.

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

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

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

Duration of investigation

14. The Commission shall conclude a countervailing investigation within one year and such countervailing investigation may, extend to a period of not more than 18 months.

Representation

15. (1) Where an interested party is represented by an outside party in an investigation, the interested party shall provide —

(*a*) the Commission with a letter of appointment of the interested party's representative; and

(*b*) in the letter of appointment under subparagraph (*a*) —

(i) details of the representative, scope and duration of the representation; and

(ii) a signature by the highest level of authority or an authorised representative, with proof of authorisation.

(2) Where an interested party terminates representation such interested party shall provide the Commission with a letter of termination signed by the highest level of authority or an authorised representative, with proof of authorisation.

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

(4) Notwithstanding subregulation (3), the Commission may communicate directly with an interested party.

(5) The communication of the appointment of an interested party's representative shall be made at the time of submitting an application referred to under regulation 3.

Oral hearing

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

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

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

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

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

(6) The Commission may reject a request for an oral submission where the Commission determines that —

(*a*) substantially similar information has already been submitted in written form to the Commission;

(*b*) written submission, in the Commission's view, adequately sets out the matter intended for an oral submission; or

(*c*) the oral submission would unduly delay finalisation of the investigation.

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

Preliminary report

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

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

(3) The preliminary report shall contain the following —

(*a*) the identity of the applicant;

(*b*) a full description of the product under investigation;

(*c*) the date of the decision of the Commission to initiate the investigation;

(*d*) the initiation date and notice number;
(*e*) the date of the preliminary findings of the Commission on subsidisation and injury;
(*f*) the margin of subsidisation in respect of each subsidy;
(*g*) the methodology used by the Commission to determine the margin of subsidisation;
(*h*) the injury factors considered;
(*i*) the causality factors considered; and
(*j*) the Commission's finding.

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

Comments on preliminary report

18. (1) An interested party shall comment, in writing, within 14 days of receipt of a preliminary report.

(2) Notwithstanding subregulation (1), the Commission may grant an interested party an extension of days to submit comments, on good cause shown by such interested party.

(3) A request for extension under subregulation (2), shall be in writing, at least seven days prior to the deadline and the request shall contain proper motivation for the request.

(4) The Commission shall not accept new information following a preliminary finding, other than as contemplated under subregulation (5).

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

Conclusion of investigation

19. (1) The Commission shall, upon conclusion of an investigation, submit recommendations to the Board in terms of section 31 (6) of the Act.

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

(*a*) whether a countervailable subsidy is being provided with respect to the subject product 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 SACU industry producing like products, or
  (ii) the subject product is through the effects of the subsidy, materially impeding the establishment of the SACU industry, for the production of like products.

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

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

(5) Where the Board makes an affirmative determination, the Board shall recommend to the SACU Tariff Board, for the imposition of the countervailing duties on the subject products investigated.

(6) The recommendation in accordance with subregulation (5) shall be accompanied by a report, which contains the following —

(*a*) the identity of the applicant;

(*b*) a full description of the product under investigation;

(*c*) the initiation date and notice number;

(*d*) the margin of subsidy;

(*e*) the methodology used by the Commission to determine the margin of subsidy;

(*f*) the injury and causality factors considered; and

(*g*) the Board's finding.

(7) The Commission and the Board shall preserve the requirements of confidentiality and consider relevant issues of fact and law, in referring the recommendation to the SACU Tariff Board.

Withdrawal of application

20. (1) An application made under regulation 3, may be withdrawn at any time after an investigation has been initiated, and the Commission shall terminate the investigation.

(2) Notwithstanding the provisions of subregulation (1), the Commission shall continue an investigation where it is in the public interest to continue such investigation.

Termination for insufficient evidence, *de minimus* or negligible volume

21. (1) An investigation may be terminated at any time where the Commission or Board is satisfied that there is insufficient evidence of subsidy, injury or causal link.

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

Subsidies

22. (1) For purposes of these Regulations, a subsidy shall be deemed to exist if —

(*a*) there is a financial contribution by a Government or any public body within the territory of an exporting country, where —

(i) a Government or public body provides a direct transfer of funds such as grants, loans and equity infusion,

(ii) a Government revenue that is otherwise due is foregone or not collected,

(iii) a Government provides goods or services other than general infrastructure or purchase of goods, and

(iv) a Government makes payment to a funding mechanism or entrust, or directs a private body to carry out one or more of the type of functions referred to under subparagraphs (i) and (iii), which would be vested in the Government;

(*b*) there is any form of income or price supported by the Government; and

(*c*) a benefit conferred.

(2) For the purpose of subregulation (1), the territory of a country shall include any area set aside as an export processing or development zone and other similar areas.

Countervailability of subsidies

23. (1) A subsidy shall be countervailable where such subsidy —

(*a*) is granted to a specific enterprise or industry; and

(*b*) causes material injury to the SACU industry producing the like product.

(2) An export subsidy shall be deemed to be a specific subsidy, regardless of whether the subsidy has explicitly or in fact been made contingent upon export performance.

(3) The Commission shall take into account the length of time during which the subsidy programme has been in operation, where a subsidy is deemed specific under subregulation (2).

(4) The Commission may impose a countervailing measure where, a subsidy is one per cent or more of the invoiced export price:

Provided that, for developing countries, the subsidy shall be two percent.

(5) The Commission shall establish the extent of a subsidy before the Commission determines whether the subsidy exceeds the *de minimis* standard.

Subsidies not alleged in application

24. The Commission shall consider any subsidies not alleged in an application under regulation 3, which the Commission discovers during the course of an investigation.

Calculation of subsidy margin

25. (1) The amount of subsidy is the amount of money which represents a benefit conferred on a recipient.

(2) The Commission may take into account the following to determine the margin of a subsidy conferred on a recipient —

(*a*) with regards to a grant —

(i) it may include equity infusion, the conversion of a loan into equity or waiver of debt due to agreement, and

(ii) it may be determined by an amount of subsidy countervailable in a particular year, and shall provide for the time and the value of the money and include —

(*aa*) reference to the amount originally paid, the number of years that have lapsed since the grant was paid; or

(*bb*) the average life cycle of the plant or equipment and the interest rate payable in the country of origin;

(*b*) with regards to a loan —

(i) a provision of a loan by a foreign government shall not be deemed to be a subsidy, unless the amount or interest rate that the recipient of the loan pays under the loan is less than the amount or rate that the recipient would pay under a comparable commercial loan, that such recipient would obtain on the market, in which case, the benefit to the recipient shall be deemed to be the difference between those two amounts or rates, or

(ii) in determining subsidy countervailable in a particular year the Commission shall, consider time and the value of the money which include reference to the original amount of the loan, the number of years that have lapsed since the grant was paid, the average life cycle of the plant or equipment, the interest rate payable on the loan and the market interest rate applicable in the country of origin,

(*c*) of a foregoing of revenue in determining an amount of subsidy countervailable in a particular year, the Commission shall take cognisance of any revenue due to the government of the exporting country that was forgone by such government and the products to which such revenue applies;

(*d*) with regards to a tax holidays and rebates —

(i) corporate tax that is not paid on export earnings are a prohibited subsidy except for developing countries listed in annex VII of the Subsidies Agreement,

(ii) the Commission shall in determining the margin of subsidy regarding tax holiday and rebates consider —

(*aa*) the company's export earnings for the period under review and the corporate tax rate in that country; or

(*bb*) the amount of tax paid in relation to the amount payable in the absence of such tax holiday, and the products to which such subsidy applies;

(*e*) with regards to an input subsidy, the Commission shall consider the effect of such input subsidy on the cost or price of the product under investigation;

(*f*) with regards to an over-reimbursement of customs duty —

(i) over-reimbursement of customs duty occurs where a manufacturer imports raw materials that are used to manufacture final products, that are exported and the duty paid on importation is over-reimbursed, or where the exporter cannot provide proof that the imported product, on which reimbursement was claimed, is actually incorporated in the export product, and

(ii) the Commission shall consider the amount of customs duty payable or rebated when determining the margin of over-reimbursement of customs duty;

(*g*) with regards to a preferential interest rates for export

(i) the Commission shall consider —

(*aa*) interest rates lower than those prevailing in the market granted to a company by government or a public body at the behest of government as a subsidy, and

(*bb*) interest rate payable on domestic and export markets, the original amount of the loan and the value of the product exported in determining the margin of subsidy;

(*h*) with regards to a loan guarantee —

(i) the Commission shall consider a provision of a loan guarantee by a foreign government to a recipient a subsidy where —

(*aa*) the loan granted under the government guaranteed loan is less than the amount that the recipient would pay under a comparable commercial loan that is not guaranteed, and

(*bb*) the benefit of the loan guarantee shall be deemed to be the difference between the two amounts;

(*i*) with regards to other subsidies —

(i) the Commission shall determine the margin or amount of subsidy for any subsidy not indicated under this section,

(ii) the Commission shall consider the following, in determining whether a subsidy has been granted —

(*aa*) the time value for money,

(*bb*) the duration of subsidy,

(*cc*) whether the subsidy is linked to exports or to all sales or production, and

(*dd*) any other relevant information at the Commission's disposal.

(3) The Commission shall establish the amount of the subsidy according to the available data, if the Commission does not have sufficient data to verify the amount of the subsidy.

(4) For the purposes of this regulation, "input subsidy" means a subsidy paid on the input cost of a product that is exported.

Material injury

26. (1) The Commission shall consider the following, when determining material injury suffered by the SACU industry —

(*a*) a significant increase in subsidised imports to production in SACU industry;

(*b*) whether there is a significant price undercutting by the subsidised imports as compared with the price of the like product in SACU;

(*c*) whether the effect of such imports is to depress prices of the like product to a significant degree; or

(*d*) whether the effect of such imports, is to prevent price increases which otherwise would have occurred.

(2) The Commission shall consider effects of the subsidised imports on the SACU industry, reflected by the following —

(*a*) the actual and potential decline in sales, profits and loss, production, market share, productivity, return on investment or utilisation of capacity;

(*b*) factors affecting SACU industry prices;

(*c*) the actual and potential negative effects on cash flow, inventories, employment, wages, investment, growth and ability to raise capital or investment; or

(*d*) any other factor the Commission deems to be significant.

Threat of material injury

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

(2) The Commission shall, when determining a threat of material injury to the domestic industry under subregulation (1), consider the following —

(*a*) the rate of increase of the subsidised imports;

(*b*) the likelihood of significant increase in subsidised imports into SACU, for contracts or future purchase orders;

(*c*) whether imports are entering at prices that will have a significant depressing or suppressing effect on SACU prices, and would likely increase demand for further imports;

(*d*) the existence of significant export capacity or inventories of the product in question, in the exporting companies; and

(*e*) any other factors which the Commission determines has an economic effect on the SACU industry.

Material retardation of establishment of SACU industry

28. (1) The Commission shall not initiate an investigation on the basis of a material retardation of the establishment of a SACU industry, unless the industry or a proposed industry has supplied the Commission with a comprehensive business plan indicating the establishment of such industry in the absence of a subsidisation.

(2) The Commission may request a provisional payment or recommend a countervailing duty where the establishment of SACU industry is materially retarded by subsidised imports.

(3) The Commission may recommend that a countervailing duty be withdrawn, where significant progress has not been made to establish an industry under subregulation (2), within one year following the imposition of a countervailing duty.

Causality

29. (1) The Commission shall determine whether there is a causal link between subsidised imports and injury to the SACU industry.

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

(*a*) the change in the volume of subsidised imports, whether absolute or relative to the production in the SACU market;

(*b*) the price undercutting experienced by the SACU industry in relation to the imported product;

(*c*) the market shares of the subsidised import;

(*d*) the magnitude of the margin of subsidisation; and

(*e*) the price of fairly traded imports available in the market.

(3) The Commission shall examine any known factor other than the subsidised import which is injuring the SACU industry, and the injury caused by such factor shall not be attributed to the import.

(4) The factors referred to under subregulation (3) shall include —

(*a*) the volume and price of non-subsidised import of the product in question;

(*b*) contraction in demand or change in the pattern of consumption;

(*c*) trade restrictive practice and competition between the foreign and SACU producers;

(*d*) development in technology; and

(*e*) the export performance and productivity of the SACU industry.

(5) The Commission may cumulatively assess the effect of the subsidised imports, where cumulation is appropriate for —

(*a*) competition between imports from different countries;

(*b*) competition between the imported products and the SACU like products;

(*c*) negligible imports from countries; and

(*d*) the margin of subsidy which is one per cent or more when expressed as a percentage of the export price.

(6) The volume of export shall be regarded as negligible where the volume of imports for the like product is found to account for less than three per cent of the total imports of the like product into the SACU market:

Provided that the volume of the subsidised imports shall not be regarded as negligible if the volume of subsidised imports, from the individual countries found to account for less than three per cent of the total imports of the like product into the SACU market, collectively account for more than seven per cent of the total imports of the like product into the SACU market.

Currency conversion

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

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

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

Level of countervailing duty

31. The Commission may apply the lesser duty rule, where both the corresponding importer and exporter are cooperating fully.

Verification of information

32. (1) The Commission may, during the course of an investigation satisfy itself of the accuracy of the information supplied by an interested party, by conducting verifications as it deems necessary.

(2) The Commission may conduct on-the-spot verification visits to obtain information and data required for investigation.

(3) The Commission may, in writing, inform the interested party concerned of the dates of an intended verification visit under subregulation (2).

(4) The Commission shall inform the country concerned of the dates of the intended verification visit and shall conduct the verification on those dates, unless that country objects to the verification.

(5) Where the country concerned objects to the Commission's verification, the Commission may —

(*a*) make a preliminary or final decision based on the facts available; and

(*b*) exclude any information submitted by any party in that country.

(6) The Commission may terminate any verification activity and disregard the information submitted by an interested party and come to a conclusion, according to the best information available, where for purposes of verification, an interested party —

(*a*) refuses to attend the verification;

(*b*) refuses the Commission access to relevant information;

(*c*) fails to provide information within the timeline determined by the Commission; or

(*d*) otherwise acts so as to impede the verification process.

(7) The Commission shall after the verification visit, prepare a report stating the information which was verified and which information was not available for verification.

(8) The verification report shall be intended to identify information that was verified by the Commission and the interested party.

(9) Where an interested party fails to agree on information verified, the Commission shall not be precluded from using such information in the Commission's findings.

(10) The Commission shall maintain a public register which shall be open to the public for inspection and a non-confidential verification report shall be placed on the public register for inspection.

(11) An interested party shall be given seven days, to comment on the verification report and where an interested party shows good cause why an extension may be granted, the Commission may grant such an extension.

Communication of final decision of SACU Council

33. (1) The Commission shall inform an applicant, in writing, of the decision by the SACU Council.

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

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

Non-cooperation by exporter or foreign producer

34. (1) Where an exporter or foreign producer does not cooperate in a countervailing investigation by the set deadline, the Commission may immediately request the imposition of a provisional payment on the basis of the facts available.

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

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

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

Form of provisional measure

35. A provisional measure may take the form of a cash deposit which is not greater than the provisionally estimated margin of subsidy.

Duration of application of provisional measure

36. (1) The Commission may not recommend for the imposition of the provisional measures within less than 60 days, after initiation of an investigation.

(2) The provisional measures recommended under subregulation (1), shall be for a period not exceeding four months and such period may be extended to nine months.

Definitive countervailing duty

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

(2) A definitive countervailing duty may be imposed with retroactive effect.

(3) The Commission may —

(*a*) base final findings for an interested party that fails to cooperate on the facts available; and

(*b*) determine the level of countervailing measure on such facts available.

Price undertaking

38. The Commission may suspend or terminate an investigation without the recommendation for imposition of provisional measures or countervailing duty, following the receipt of a satisfactory price undertaking under which —

(*a*) a country agrees to eliminate or limit the subsidy or take other necessary measures; or

(*b*) the exporter agrees to revise price or to cease exports to SACU at subsidised prices, so that the Commission is satisfied that subsidised export or the material injury is eliminated.

Acceptance of price undertaking

39. (1) The Commission shall not accept an undertaking, unless it has made a preliminary affirmative determination of subsidisation, injury and causal link.

(2) Where the Commission declines to accept an undertaking, the Commission shall provide the —

(*a*) exporter or where appropriate, the Government of the exporting country that offered the undertaking the reasons for its decision; and

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

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

(4) An undertaking under subregulation (3), shall not be accepted by the Commission where the Commission considers acceptance impractical.

Notification of price undertaking

40. (1) Where the Commission accepts a price undertaking from an interested party, the Commission shall publish, by Notice in the *Gazette* such acceptance of price undertaking.

(2) The Notice referred to under subregulation (1), shall include the non-confidential part of the undertaking and shall be forwarded to the Government of the country of the products which are the subject of the price undertaking, and to any other interested party.

Continuation of investigation

41. Notwithstanding the fact that an undertaking has been accepted, the Commission may upon the request of an exporter or where it thinks fit, complete the investigation.

Violation of price undertaking

42. The Commission may, in a case where an undertaking is violated by an exporter —

(*a*) resume the countervailing investigation of injury to SACU industry and make recommendation on the basis of the best information available; and

(*b*) in the interim while undertaking the investigation, recommend for the imposition of the provisional measures.

PART IV — *Review*

Initiation of review

43. (1) An interested party or representative of an interested party shall apply in writing to initiate the following —

(*a*) an interim review;

(*b*) a sunset review;

(*c*) a new shipper review; or

(*d*) anti-circumvention review.

(2) An application referred to under subregulation (1) shall be determined by the Commission.

(3) Notwithstanding subregulation (1), the Commission may initiate a review without having received a written application from the relevant interested party and in such cases, the Commission shall proceed, if it has sufficient evidence of a significant change in circumstances relating to a subsidy, material injury or a causal link, to justify the initiation of such review.

Notification

44. (1) The Government of the country concerned shall be notified of the review under regulation 43 (1), as soon as a properly documented review application has been received.

(2) The Government of the country concerned and interested parties shall be supplied with the relevant non-confidential information, as soon as the review in question has been initiated by publication in the *Gazette*.

Publication

45. The Commission shall initiate a review by notice published in the *Gazette* and such notice shall indicate the following —

(*a*) the identity of the applicant;

(*b*) the product under consideration;

(*c*) the investigation periods for subsidisation and injury, respectively;

(*d*) the scope of the review;

(*e*) the current countervailing measures in place; and

(*f*) a summary indicating the basic information on which the review is based.

Response by interested party

46. (1) An interested party shall be issued a questionnaire in a format to be determined by the Commission, to note its response to a Notice referred to under regulation 44 (2).

(2) An interested party shall be deemed to have received the questionnaire under subregulation (1), seven days after the dispatch of the questionnaire by the Commission.

(3) An interested party shall on receipt of the questionnaire under subregulation (1), respond to the Commission within 30 days.

(4) An interested party not directly informed of the investigation by the Commission shall, within 40 days of publication in the *Gazette* of the date of initiation of investigation, submit questionnaires to the Commission.

(5) An interested party shall submit responses, in writing.

(6) The Commission shall treat responses that are not indicated confidential as non-confidential.

(7) The Commission may render any submissions by interested parties as deficient, if they do not comply with the provisions of this regulation.

PART V — *Interim Review*

Time frame

47. The Commission shall not consider an application for an interim review, sooner than 12 months after the publication of SACU Council's final finding, in the original investigation or the previous review.

Change of circumstances

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

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

(3) An interested party shall not be precluded by the Commission from requesting an interim review, simultaneously with a sunset review, in order to expand or limit the scope of application or level of any countervailing duties.

Review procedure

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

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

Final recommendation

50. The Commission's final finding, in the form of a recommendation to the SACU Tariff Board, may result in an increase, decrease, the withdrawal or the reconfirmation of the existing countervailing duty.

PART VI — *New Shipper Review*

Eligibility

51. (1) An exporter that that did not export to SACU during the original investigation period for subsidisation, may request a new shipper review.

(2) An exporter requesting a review under subregulation (1), shall provide sufficient information to prove that it is not and was not related to any party to which the countervailing duty was applied.

(3) The Commission shall not consider a request for a new shipper review, before definitive countervailing duties have been imposed.

Information required

52. (1) A new shipper shall —

(*a*) provide the Commission with full information on subsidies and any other information deemed necessary by the Commission; and

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

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

Withdrawal of countervailing duty

53. (1) A countervailing duty in respect of the new shipper shall be withdrawn simultaneously with the initiation of a new shipper review.

(2) The Commission may recommend to SACU Tariff Board for imposition of provisional payments at the same level as the countervailing duties, simultaneously with withdrawal of the countervailing duty and such provisional payments, shall remain in force for the duration of the review.

Review procedure

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

(2) An exporter's margin of subsidisation shall normally be determined as the subsidy expressed as a percentage of the export price to Botswana.

(3) Where no export price to Botswana can be established, the Commission may determine the export price on any reasonable basis, including with reference to the new shipper's export price to an appropriate third country.

Final recommendation

55. The Commission's final finding may result in a recommendation to the SACU Tariff Board for —

(*a*) imposition of a countervailing duty, equal to or lower than the margin of subsidisation; or

(*b*) termination of the provisional payment.

PART VII — *Sunset reviews*

Time frame

56. (1) A countervailing duty, shall remain in force for a period not exceeding five years, from the imposition of a sunset review or from the last sunset review.

(2) Where a sunset review has been initiated prior to the lapse of a countervailing duty, such countervailing duty shall remain in force, until the sunset review has been finalised.

Initiation of sunset review

57. (1) The Commission shall publish a Notice in the *Gazette* indicating that, a countervailing duty will lapse unless a sunset review is initiated approximately six months prior to the lapse of such countervailing duty.

(2) The Commission shall directly inform an interested party known from the original investigation or last review of the subject product, of the imminent lapse of the countervailing duty as soon as the notice contemplated in subregulation (1), has been published.

(3) An interested party shall receive 30 days from the publication of the notice contemplated in subregulation (1), to request a sunset review.

(4) Where the Commission decides to initiate a sunset review, the Commission shall publish an initiation notice in the *Gazette* prior to the lapse of such duties.

Notification

58. (1) The Commission shall notify the Government of any country concerned and any other interested party of —

(*a*) the initiation of the investigation; or

(*b*) the termination of the proceeding;

after the Notice under regulation 57 has appeared in the *Gazette*.

Review procedure

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

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

Information required

60. (1) Following publication of the notice, the SACU industry shall indicate whether it will request a sunset review to be undertaken.

(2) The SACU industry shall provide the Commission with detailed information in such form as may be requested by the Commission, indicating the likelihood of a continuation or recurrence of subsidised exports and injury in the event that the countervailing duty is removed.

(3) Once a sunset review has been initiated, the exporters and foreign producers shall be required to submit information in the required format to enable the Commission to make a finding on subsidisation.

(4) The exporters and foreign producers under subsection (3), shall not be precluded from supplying any other information they may deem relevant.

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

Non-cooperation

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

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

(3) For the purposes of this regulation, "deadline" means the final date communicated by the Commission, for submission, response, comment and requests.

Final recommendation

62. The Commission's recommendation to the SACU Tariff Board, may result in the withdrawal, amendment or reconfirmation of the original countervailing duty.

PART VIII — *Anti-circumvention review*

Circumvention

63. (1) Other than circumvention contemplated in subregulation (2) (*a*) and (*d*), circumvention shall be deemed to take place, if one or more of the following conditions are met —

(*a*) a change in the pattern of trade between third countries and Botswana or the common customs area of the SACU which results from a practice, process or work for which there is no or insufficient cause or economic justification other than the imposition of the countervailing duty; or

(*b*) remedial effects of the countervailing measure are being undermined in terms of the volumes or prices of the products under investigation.

(2) For purposes of anti-circumvention the following types of circumvention shall be treated separately —

(*a*) improper declaration of the —

(i) value of the product,

(ii) origin of the product, or

(iii) the nature or classification of the product;

(*b*) minor modification to the product subject to the countervailing duty;

(*c*) the export of parts, components and sub-assemblies with assembly in a third country or within the common customs area of the SACU;

(*d*) absorption of the countervailing duty by either the exporter or the importer;

(*e*) a declaration under a different tariff heading, even where such different tariff heading does provide for the clearance of that product; and

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

(3) Any instance of circumvention as contemplated in subregulation (2) (*a*), shall be referred to the Botswana Unified Revenue Services for further investigation and shall not preclude the Commission from taking countervailing action, if the information at the Commission's disposal, including information obtained through submissions by interested parties, warrants such action.

(4) Any minor modification of the product shall be deemed to have taken place, if the subsequently exported product —

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

(*b*) is a substitute for the product on which countervailing duties have been imposed.

(5) An Assembly in a third country or within the common customs area of the SACU, shall be deemed to take place if the value added in such third country or in the common customs area of the SACU, does not exceed 25 per cent or does not constitute a major transformation process.

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

(7) The value added in terms of subregulation (5), shall be determined with reference to the direct and indirect costs of production only and shall not include selling, general, administrative or packaging expenses or profit.

(8) An absorption of the countervailing duty shall be deemed to take place, if —

(*a*) the exporter decreases its export price in any manner to compensate the importer or a third party for the extra burden imposed by the countervailing duties, unless there is a correspondent decrease in the normal value of the product;

(*b*) the importer does not increase its price in line with the countervailing duties, unless such importer can provide evidence indicating that it absorbed such countervailing duties without assistance from any other party, and only from revenue generated by the specific product in question; or

(*c*) in cases involving tenders, the tender price is not increased by the effect of the countervailing duty.

Review procedure

64. (1) Where an anti-circumvention complaint is lodged with the Commission within one year of the publication of the SACU Council's final determination, the SACU industry shall not be required to update the SACU industry's injury information.

(2) The Commission shall not require injury information in cases of circumventions under regulation 63 (2) (*b*) or (*c*).

(3) Where an anti-circumvention complaint is lodged with the Commission prior to or within one year of the publication of the Commission's final finding, and in relation to any circumvention alleged in regulation 63 (2) (*b*), (*c*), (*d*), (*e*), or (*f*), the Commission may use the information previously established on the subsidies to determine the margin of subsidisation until such time as the exporter, foreign producer or foreign Government has submitted the proper information.

(4) The Commission may impose provisional payments on the basis of the margin of subsidy determined.

(5) The Commission may make a preliminary or final determination on the basis of the facts available, in the event that the relevant interested parties have not submitted appropriate information before the set deadline.

(6) Where there is a deficient response, an interested party shall be given the opportunity to address any deficiencies within seven days and such additional information shall be taken into consideration by the Commission in the Commission's determination

(7) Where an anti-circumvention review involves absorption, the Commission may determine the level of the absorption with reference to the failure in the movement in the resale price of the subsidised imported product.

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

Information required

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

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

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

(4) Where the party against whom the allegation is made, fails to respond within the stated deadline, the Commission may make a decision on the facts available to it.

Final recommendation

66. If the Commission makes a finding that circumvention has taken place, the Commission's final recommendation may result in –

(*a*) increase of countervailing duties to compensate for absorption of countervailing duties; or

(*b*) extension of the scope of the countervailing duties to apply to parts, components or substitute new models and the like products.

PART IX — *Miscellaneous*

Judicial review

67. Any person who is aggrieved by a decision of the Commission, may within 30 days of such decision, appeal to the High Court against such decision.

Application for refund

68. (1) An importer or exporter may request reimbursement of countervailing duties collected by the Commission, where it is shown that the subsidy margin, on the basis of which countervailing duties were paid, has been eliminated or has been reduced to a level which is below the level of the duty in force.

(2) Any request containing all the required information, for a refund shall be submitted to the Commission during the anniversary month of the countervailing duty, and shall relate only to the preceding 12 months' period.

(3) An application for refund shall —

(*a*) be considered as duly supported by evidence, where it contains precise information on the amount of the refund of countervailing duty claimed and customs documentation relating to the calculation and payment of such countervailing duty; and

(*b*) include, for the relative period under review, information on normal values and export prices to the SACU for the producer or exporter to which the countervailing duty applies.

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

(5) The Commission may, at any time after receiving a refund application, initiate an interim review, whereupon the information and findings from such interim review shall be used to determine whether a refund is justified.

Refund following interim review

69. Where the Commission, following an interim review, recommends that the existing countervailing duty be decreased or withdrawn, the relevant importer or importers may request that countervailing duty be refunded, in accordance with the SACU Council's final findings.

SCHEDULE

Application for countervailing investigation
(*regulation 3 (2)*)

BOTC
Botswana Trade Commission

APPLICATION FOR REMEDIAL ACTION AGAINST
THE ALLEGED SUBSIDISED EXPORT OF

_____

(insert product)

MANUFACTURED/ PRODUCED IN

_____

(insert country)

APPLICANT:

(insert name of company filing the application)

_____

1. Introduction

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

1.2 When completing this questionnaire, please read all instructions carefully. You should be aware that your response to the questionnaire and any subsequent additional requests formulated by the Commission will constitute the basis of which preliminary and final findings will be made regarding the investigation.

1.3 Non-submission of all relevant information or the submission of incomplete information can have unfavourable consequences on the outcome of the investigation. In this respect, it is essential that your response to the questionnaire is accurate and complete as possible and should attach supporting documents. Do not leave any question or section blank.

2. Purpose

2.1 The purpose of this questionnaire is to help the Southern African Customs Union (SACU) industry to bring together in a concise and logical form the information needed by the Botswana Trade Commission (the Commission) to investigate the alleged subsidy.

3. Legal framework

3.1 Countervailing investigations are conducted in terms of (i) the Botswana Trade Commission (Commission) Act, 2013 which mandates the Commission to investigate allegations of subsidised exports within the Southern African Customs Union (SACU) and (ii) Countervailing Investigation Regulations (CIR) which provide for the manner in which the investigations are to be initiated and conducted.

3.2 Being a member of the World Trade Organisation (WTO), the Commission must act consistently with Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Subsidies and Countervailing Measures Agreement.

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

4. Submission of Confidential and Non-confidential Information

4.1 If the response to the questionnaire is based in part on confidential material, it must contain a non-confidential version of the confidential material together with an explanation of why it is confidential. The information must be provided in the manner below:

4.1.1 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.

4.1.2 A person making a claim in terms of paragraph (4.1.1) 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 paragraph 1(2); or

(ii) motivating, in the case of other information, why that Information should be recognised as confidential; and

(*b*) either —

(i) a written abstract of the information in a non-confidential form; or

(ii) a sworn affidavit setting out the reasons why it is impossible to comply with subparagraph (i).

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

(*a*) indicate where information has been omitted in each case;

(*b*) provide reasons for confidentiality in each instance;

(*c*) provide a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information in each instance; and

(*d*) where information is not susceptible to a non-confidential summary, indicate this in each instance and provide a sworn affidavit setting out the reasons why the information is not susceptible to summarisation.

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

5 General

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

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

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

5.6 If your response is in respect of more than one product, a reference to "product" should be considered to be a reference to "products", and the foreign producer/ exporter should respond to the relevant question(s) in respect of all products separately.

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

Chief Executive Officer, Botswana Trade Commission, Plot No. 55745, Main Airport Road, Block 8, BOBS Building, Private Bag 3AAD, Poso House, Gaborone.

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

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

5.10 Any documents, whether hard copies or electronic submissions, not complying with the above formalities may be returned to the party submitting them and not be used by the Commission for the purpose of this investigation.

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

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

6 Verification of Information Provided

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

7 *Language of the Investigation*

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

8 False Statements

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

9 Public File

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

10 Assistance with Questionnaire

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

GLOSSARY

CIR	Countervailing Investigation Regulations
Subsidies and Countervailing Agreement	General Agreement on Tariffs and Trade 1994 and the WTO Subsidies and Countervailing Measures Agreement.
Commission	Botswana Trade Commission
SACU	Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland)
WTO	World Trade Organisation

PARAGRAPH A

APPLICANT

A1. Company Name: _____

Contact person: _____

Postal Address: _____

Physical Address: _____

_____

_____

Tel:(_____)_____ Fax: (_____) _____

Webpage: _____

Email : _____

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

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

_____

A2 State the names, telephone numbers of and positions held by the company's officers to be contacted.

Name:_____

Postal Address:_____

_____

_____

Physical Address:_____

_____

_____

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

Webpage:_____

Email:_____

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

A3 Have you appointed a consultant, legal or other representative? If yes, please attach a copy of the letter of appointment setting out the scope and duration of the appointment, as required by the CIR as Annexure A3. Alternatively, if you have appointed a legal representative to assist you in these proceedings, attach the original Power of Attorney.

Name:_____

Designation:_____

Address:_____

_____

_____

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

Email:_____

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

A5 Provide a diagram of your company's group structure and indicate the percentage stockholdings and cross-holdings. Attach this as Annexure A5.

A6. Indicate all shareholders holding more than 5% of equity in your company. Attach this as Annexure A6.

Name of shareholder	Number of shares	Percentage shareholding

A7 The foreign manufacturer/ exporter is an industrial organisation or public company, private company or closed corporation, if other please specify.

_____

_____

A8 Indicate the franchise, manufacturing, licensing, know-how, technology and distribution agreements in place in respect of inputs, manufacturing and outputs, and which relate to the product that is the subject of this application:

A9 Please attach a copy of the Articles of Association and the Memorandum of Association and attach it as Annexure A9.

A10 List all members of the Board of Directors and of the Board of Shareholders. For each of the members, please state what they represent, what their function is and what their voting rights are.

Person: _____

Function: _____

Voting rights _____

A11 Furnish an organogram indicating the nature of each component in the structure, e.g. financing, manufacturing (product range), distribution (product range), etc.

A12 The name(s) and address(es) of the **related** firms who provide inputs for your processing/ manufacturing and give details of these inputs.

A13 The name(s) and address(es) of the **related** firms involved with the distribution of the product(s) being the subject of this investigation.

A14 Provide a flow chart of your marketing/distribution channels for the product(s) concerned in the application and indicate the percentage off-take for each channel.

A15 Provide proof of registration of the company with competent Authorities and attach it as Annexure A15.

_____

_____

A16 Name the product allegedly being subsidised: _____

A17 Country of origin/export _____

A18 Indicate which of the following is the basis for normal value:

(*a*) the normal value is based on domestic sales in the country of origin;
(*b*) export price to a third country; and
(*c*) a constructed normal value.

A19 List the factors in respect of which actual material injury/a threat of material injury/the material retardation of the establishment of an industry is alleged.
(i)
(ii)
(iii)
(iv)
(v)
(vi)
(vii)
(viii)

PARAGRAPH B PRODUCTS

Note on like product
The Countervailing Regulations defines like product as
(*a*) a product which is identical, i.e. alike in all respects to the product under consideration; or
(*b*) in the absence of such a product, another product which, although not alike in all respects, *has characteristics closely resembling those of the product under consideration.*

Further details on like product are contained in the CVR.

B1 Imported (subject) product

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

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

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

B1.3 The production process used is as follows:

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

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

** (If possible, provide pictures, brochures or catalogues) and specifically provide details for the above)

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

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

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

B1.8 Indicate if you are aware of any possible loopholes in the tariff classification, i.e. whether the product can be imported under any other tariff heading.

B2SACU like product

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

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

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

B2.3 The production process used is as follows:

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

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

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

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

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

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

**** Note: In that regard, the applicant is expected to describe both the SACU product as well as the imported product in sufficient detail for proper comparison and understanding of the product.**

B3 Like product in the country of export or origin

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

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

B3.3 The production process used is as follows:

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

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

_____

_____

_____

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

_____

_____

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

_____

_____

_____

_____

PARAGRAPH C INTERESTED PARTIES

C1If there is a SACU representative organisation submit the following information:

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

Name of orgnisation:_____

Name of contact person:_____

Designation:_____

Postal Address:_____

_____

_____

Physical Address:_____

_____

_____

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

Webpage:_____

Email:_____

(*b*) Name the SACU producers in the industry affiliated with the organisation and provide their names, full contact details, postal and physical address, telephone number, fax number, email as well as names and details of their contact person.

Name of organisation:_____

Name of contact person:_____

Designation:_____

Postal Address:_____

_____

_____

Physical Address:_____

_____

_____

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

Webpage:_____

Email:_____

C2Provide the names, full contact details, postal and physical address, telephone number, fax number, email as well as names and details of the contact person of all other SACU producers of the like product.

Name of organisation:_____

Name of contact person:_____

Designation:_____

Postal Address:_____

_____

_____

Physical Address:

_____

_____

_____

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

Webpage:_____

Email:_____

An application shall be regarded as brought by or on behalf of the SACU industry if:

(*a*) at least 25 per cent of the SACU producers by domestic production volume support the application; and

(*b*) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application.

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

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

Industry Standing
(Total domestic production of like goods for the 12 months preceding the lodging of the application)

Producer	Production volume-Support Application	Production volume-Oppose application	Production volume-Neutral
Your Company			
Other producers 1. 2. 3.			
Total SACU			

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

Name of organisation:_____

Name of contact person:_____

Postal Address:_____

_____

_____

Physical Address:_____

_____

_____

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

Webpage:_____

Email:_____

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

Name of organisation:_____

Name of contact person:_____

Postal Address:_____

_____

_____

Physical Address:_____

_____

_____

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

Webpage:_____

Email:_____

PARAGRAPH D: COUNTERVAILING/SUBSIDISED EXPORT

1. Countervailing action is against subsidised exports which causes injury to the SACU industry. In terms of Regulation 23 of CR, a subsidy shall be deemed to exist if —
   1.1 there is a financial contribution by a government or any public body within the territory of an exporting country, where:
      (*a*) a government or public body provides a direct transfer of funds through grants, loans, and equity infusion;
      (*b*) government revenue that is otherwise due is foregone or not collected;
      (*c*) a government provides goods or services other than general infrastructure, or purchases goods;
      (*d*) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (ii) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by government.
   1.2 there is any form of income or price support by government; and
   1.3 a benefit is conferred.
2. In view of the above, the application the applicant shall provide information, in the sense of proof, regarding each of the following elements:
   2.1 Existence of a financial contribution;
   2.2 From a government or any public body in the territory of the country(ies) covered by the application; and
   2.3 The financial contribution confers a benefit to its recipient.

3. Existence of a subsidy programme

D.1 Give details of the financial aid or assistance programme, substantiating your response with supporting documents and indicate the following:

   D1.1.1 Name and description of the subsidy programme(s) which are believed to apply to the allegedly subsidised goods, and the legislation or regulation under which the programme operates.
   D1.1.2 Conditions for granting the subsidy.
   D1.1.3 The statutory body or authority responsible for the administration of the programme.
   D1.1.4 The nature and operation of the programmes, including the product coverage and the form of assistance provided, identify the benefits provided under the programmes, export subsidy, government grants, loan guarantees, tax credits.
   D1.1.5 Estimated amount of subsidy, calculated as a percentage of the value for duty of the goods when imported into SACU and full calculations should be shown.
   D.1.6 Details of the financial aid or other assistance scheme regarding any inputs of the product under investigation.

4. Specificity

4.1 In addition to the above requirements, the applicant must proof that the subsidy is specific. Regulation 24 of CR sets forth that a subsidy shall be countervailable only if:
   (*a*) if the granting authority explicitly limits access to a subsidy to an enterprise or industry or group of enterprises or industries, or if the Commission finds in fact that the subsidy is used by a limited number of enterprises or industries or a disproportionately large amount of the subsidy is granted to a limited number of enterprises or industries or certain enterprises or industries; and

(*b*) it causes material injury to the SACU industry producing the like product.

4.2 In view of the above, the applicant will have to submit prima facie evidence that the that each programme included in the application has a subsidy specific to a company, a group of companies, an industry, a group of industries, a region, or several regions in the jurisdiction of the exporting country.

D.2 Name the country in which the government provides the financial aid or other assistance.

_____

D.3 Name the product(s) that benefit from the assistance.

_____

PARAGRAPH E MATERIAL INJURY

Note: Before the Commission can initiate a countervailing investigation, it must have *prima facie* evidence to reach a reasonable conclusion that the alleged subsidized exports are causing or threatening to cause material injury to a SACU industry.

The applicant must provide sufficient evidence to reach a reasonable conclusion that alleged subsidised exports are causing or threatening to cause material injury to a SACU industry. The applicant must provide data showing the negative impact that the alleged subsidised imports have.

When preparing the information requested in the following sections, please note the following:

Product

The injury determination must be based exclusively on data for the like product manufactured and sold by the applicant. Only where such separate identification of that production is not possible, the effects of the allegedly subsidised imports can be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided. If data are determined on the basis of estimates, the applicant must explain the basis for such estimates.

Period for submission of data

The period of investigation is normally three years. However, for certain factors such as price undercutting the data may cover a shorter, but recent and representative period of time.

E1 General information

E1.1 Provide a flow chart of your marketing/distribution channels for the product(s) concerned in the application and indicate the percentage off-take for each channel.

E1.2 Provide full details of your terms and conditions of sale and selling price to each class of customer, e.g. wholesaler, retailer, downstream producer, etc. Attach a copy of your standard terms and conditions as Annexure E1.2.

E1.3 Give the reasons and basis for your categorisation of customers.

E1.4 Enumerate major changes over the past three years in your answers to the above questions.

E2 FINANCIAL INFORMATION

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

E2.1 Indicate your normal accounting period.

E2.2 Provide copies of your audited financial statements, including detailed manufacturing, trading and profit and loss statements for the most recent three financial years. If your statutory statements do not include detailed accounts or schedules, please provide such accounts/schedules separately.

E2.3 Provide copies of your year-to-date management accounts, including detailed manufacturing, trading and profit and loss accounts for the period between the last financial year end and the most recent month end. Provide ancillary schedules if not part of published accounts.

E2.4 Provide a separate sales and profit before tax contribution analysis of all the product line items manufactured by your company, including a percentage analysis. The information should be sufficient to allow proper verification of your like product information.

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

E3 Effects on the SACU prices

E3.1 Price depression

Price depression occurs when the SACU industry's domestic selling prices are reduced because of the imports. Outline the extent to which the imports are causing price depression.

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

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

State the unit of measurement

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

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

E3.2 Price suppression

Price suppression occurs when price increases that would otherwise have taken place do not occur because of the subsidised exports and can be determined with reference to —

(*a*) the expected or required return of the SACU industry for the like or similar products;

(*b*) the profit margins of the industry for the like products before the entry of the subsidised imports; or

(*c*) the prices obtained for the like products by the industry directly before the entry of the subsidised imports; or

(*d*) any other reasonable basis.

E3.2.1 Outline the extent to which the allegedly subsidised goods have caused prices to be suppressed. Supporting evidence preferably in the form of financial data should be provided and the format of the Table below may assist you in providing this information.

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

State the unit of measurement

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

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

E3.3 Cost build-up

E3.3.1 Please supply a cost build-up in the format indicated in **Annexure E3.3. 1.** Where your management accounts do not allow for the specific cost elements indicated in the pro forma, please indicate the information that is available and supply as much detail as possible.

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

E4 SACU INDUSTRY SALES

E4.1 Please supply the following information on your sales volume by your industry.

	Year 1	Year 2	Year 3
Your sales volume			
Sales by other SACU producers 1. 2. 3.			
Total volume of SACU sales by SACU producers			

State the unit of measurement

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

PROFIT AND LOSS

E5 Actual and potential decline in profit

E5.1 Explain how the gross and net profit on your sales of like goods have been affected by the allegedly subsidised goods. To substantiate your claim, provide your audited accounts for last three years.

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

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

OUTPUT

E6 Actual and potential decline in output

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

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

State the unit of measurement

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

MARKET SHARE

E7 Actual and potential decline in market share

E7.1 Provide applicant's share in the SACU market for the most recent three years and compare the market share of SACU industry with the shares of imports of the allegedly subsidised product and imports from other countries for the three years:

	Year 1	Year 2	Year 3
Market share in volume (*unit*):			
Applicant			
Dumped imports			
Other imports			
Total SACU market			
Percentage share held by:			
Applicant			
Dumped imports			
Other imports			

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

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

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

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

PRODUCTIVITY

E8 Actual and potential decline in productivity

E8.1 Show how productivity has been affected over the period covered by the alleged injury on a monthly or quarterly basis if possible and state the basis used for measuring productivity:

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

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

RETURN ON INVESTMENT
E9 Return on investment.

E9.1 Show return on assets or a similarly appropriate measure of return on investment over the period covered by the alleged injury and explain how it has been affected by the allegedly subsidised goods.

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

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

CAPACITY UTILISATION
E10 Actual and potential decline in capacity and capacity utilisation

E10.1 Provide the industry's production capacity over the period covered by the alleged injury and explain how it has been affected by the allegedly subsidised goods. Supply the information requested below regarding your actual and potential capacity and capacity utilisation for the product concerned. State the unit of measurement.

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

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

	Year 1	Year 2	Year 3
Your company			
Number of shifts			
Workers per shift			
Other SACU producers Number of shifts 1. 2.			
Other SACU producers Workers per shift 1. 2.			

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

CASH FLOW

E11 Actual and negative effects on cash flow

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

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

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

INVENTORIES

E12 Actual and potential effect on inventories

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

	Year 1	Year 2	Year 3
Volume			
Value			

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

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

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

EMPLOYMENT

E13 Actual and potential negative effect on employment

E13.1 Supply the following information regarding employment:

	Year 1	Year 2	Year 3
Direct labour units: production			
Indirect labour units: production			
Total labour units: production			

Labour units: Selling and Administrative			
Rest of SACU: Total labour units: production			

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

WAGES AND SALARIES

E14 Actual and negative effects on wages and salaries

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

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

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

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

GROWTH

E15 Actual and potential negative effect on growth

E15.1 Supply the following information:

	Year 1	Year 2	Year 3
Size of the SACU market			
% growth from previous year			
Your sales volume			
Your growth %			
Rest of SACU producers volume			
Rest of SACU growth %			
Alleged dumped imports			
Alleged dumped imports growth %			

Other imports			
Other imports growth %			

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

CAPITAL AND INVESTMENT

E16 Ability to raise capital and investment

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

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

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

E17 Other Adverse Effects

E17.1 Please provide appropriate explanations and evidence to support claims of alleged injurious effects in terms of (actual and potential) effects in any of the following relevant areas:

(i) cash flow;
(ii) inventories - Report the volume and value of stocks of the like product;
(iii) employment - Report data on employment (or an estimate thereof) involved in the production, administration and sales of the like product;
(v) wages;
(vi) growth;
(vii) ability to raise capital;
(viii) investments - Report any investments made related to production, administration and sales of the like product.

E17.1 Comment on other factors affecting domestic prices.

E17.3 Future plans on production and capacity

Please comment on your future plans for production and capacity of the products concerned in the event that:

(*a*) Countervailing Measures are imposed; and
(*b*) Countervailing Measures are not imposed.

E17.4 Future plans for sales

Please comment on your future forecasts for sales of the products concerned in the event that:

(*a*) Countervailing Measures are imposed; and

(*b*) Countervailing Measures are not imposed.

E17.5 Please indicate any other injury information to be considered by the Commission and not covered by the questions above.

PARAGRAPH F THREAT OF MATERIAL INJURY

Note: It is not necessary to complete this section if you can prove actual material injury with section E above.

F1.1 Where the applicant's situation does not show actual material injury, it may lodge a complaint for imposition of countervailing measures provided applicant successfully shows that such imports pose a real threat of causing material injury to it.

F1.2 The determination of threat of material injury will be based on facts and not merely on allegations. For this reason, the applicant must provide evidence showing that the injury is clearly foreseen and imminent.

F1.3 Where the application is only based on a threat of material injury, it is advisable that estimates for all injury factors as contained in paragraph E be provided in addition to the information requested below:

F1.4 Give information relevant to your allegation that the infliction of material injury is imminent. The existence of sufficient freely disposable or an imminent, substantial increase in capacity of the exporters may indicate the likelihood of substantially increased subsidised exports to SACU.

F1.5 Substantiate any significant increase of allegedly subsidised imports into the SACU market indicating the likelihood of substantially increased importation.

F1.6 State whether the products concerned enter the country at prices that will have a significant depressing or suppressing effect on SACU prices and are likely to increase demand for further imports. Substantiate your reply.

F1.7 Indicate the exporters' inventories of the product being investigated. The built-up of significant volumes of inventories in the exporting country is a factor that may indicate the likelihood of substantially increased subsidised exports to SACU.

F1.8 Indicate the state of the economy of the country of origin/export and its influence on the operations of the manufacturers/exporters.

Material retardation

SACU companies potentially interested in producing a product may be discouraged to do so due to imports of an allegedly subsidised product. When this occurs, those companies may apply for countervailing relief alleging material retardation in the establishment of a domestic industry. Any such application will nonetheless have to clearly document the efforts undertaken to establish the domestic industry to produce the allegedly subsidised product.

SECTION G CAUSE OF MATERIAL INJURY

Note: In order to justify action against the alleged subsidised imports the Commission must be satisfied that material injury is caused by the alleged subsidised imports. Further details on causation are contained in the Countervailing Regulations.

General

G1 Give the reasons for your belief that the alleged subsidised imports are the cause of the alleged material injury or threat thereof.

Imports

Volume of the subsidised imports

The volume of exports from a country shall normally be regarded as negligible if the volume of imports for the like product from that country is found to account for less than three per cent of the total imports of the like product into the SACU market, unless countries which individually account for less than three per cent of the total imports of the like product into the SACU market for the like product collectively account for more than seven per cent of the total imports of the like product into the SACU market.

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

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

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

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

G2.2 Import values per annum

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

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

G2.3 Import prices per unit

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

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

G3 Monthly import statistics

G3.1 Import volumes per month

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

G3.2 Import values per month

Attach as **Annexure G3.2** a table indicating in the same format as under section G2.2, the monthly volumes of imports from the various countries for the last 12 consecutive months. If you believe that the statistics do not properly reflect the increasing trend in imports, you may include the monthly import statistics for the last 18 consecutive months.

G3.3 Price per unit per month

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

G4 Own imports

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

	Year 1	Year 2	Year 3
Volume imported from countries under investigation			
Volume imported from other countries			
Total volume imported			

Value imported from countries under investigation			
Value imported from other countries			
Total value imported			
Price per unit imported from countries under investigation			
Price per unit imported from other countries			
Total average price per unit imported			

G4.2 State your reasons for importing the product.

_____

_____

_____

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

	Shipment/file number	Shipment/file number
Invoice date DA 500 date DA500 number Volume (units)		
Invoice price (foreign currency) Invoice terms (FOB/CIF, etc) *Exchange rate/forward cover rate*		
Ex-factory price (BWP) Costs to FOB		
FOB price (BWP) Ocean freight Insurance		
CIF price (BWP) Customs duty *Landing and clearing costs*		
Landed costs Domestic transport		
In-store cost		
In-store cost per unit		

G5 Price undercutting

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

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

(R/unit)	POI
Your ex-factory selling price	
Other SACU producers	
Landed cost of imports from 1. 2 3.	
Undercutting per unit 1. 2. 3.	
Undercutting % 1. 2. 3.	

Undercutting %: express the undercutting per unit as a percentage of your ex-factory selling price.

Indicate the level of trade and selling conditions of your product and of the imported product separately, i.e. ex-factory/delivered, payment terms, distributor/wholesaler/ retailer.

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

Market Share

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

	Year 1	Year 2	Year 3
Your market share (%)			
Other SACU producers' market share (%)			

Total SACU producers' market share (%)			
Market share of alleged subsidised imports by country 1. 2. 3.			
Total market share of alleged subsidised imports (%)			
Market share of other imports (%)			

MAGNITUDE OF THE MARGIN OF SUBSIDISATION

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

Prices of non-subsidised products available in SACU

G7.1 Indicate the prices of non-subsidised products available in the market and the effect thereof on SACU industry prices:

	Year 1	*Year 2*	*Year 3*
Your ex-factory selling price			
Landed cost of product imported from countries not alleged to be subsidised			
Total SACU producers' market share (%) 1. 2. 3. 4.			

G7.2 The Countervailing Regulations defines unsuppressed selling price as "the price at which the SACU industry would have been able to sell the like product in question in the absence of subsidised imports, and can be determined with reference to —

(*a*) the expected or required return of the SACU industry for the like or similar product;

(*b*) the profit margins of the industry for the like product before the entry of the subsidised imports;

(*c*) the prices obtained for the like product by the industry directly before the entry of the subsidised imports; or

(*d*) any other reasonable basis.

State what your unsuppressed selling price is at present.

Other factors causing Injury.

G8.1 Indicate any contraction in demand for or changes in the patterns of consumption of the product under consideration over the past three years.

G8.2 Indicate any trade restrictive trade practices of and competition between the foreign and SACU producers.

G8.3 Indicate any recent developments in technology.

G8.4 Indicate any other factors affecting the SACU prices.

G8.5 Comment on the SACU industry's export performance.

G8.6 Comment on the productivity of the SACU industry vis-à-vis that of the exporting countries.

G8.7 Have you had any strikes, go-slows or lock-outs during the past twelve calendar months? Please elaborate.

G8.8 Indicate what the effect of the changing exchange rate has been on -

(*a*) Your production cost;

(*b*) your selling price; and

(*c*) the price of the imported product.

G8.9 Indicate any other factors affecting your sales or your sales prices, including the state of the economy and the industry.

PARAGRAPH H: PROVISIONAL COUNTERVAILING DUTY

H1.1 At any time after an investigation has been initiated, a provisional a countervailing duty may be imposed where a preliminary recommendation, approved by the Commission's Board of Directors, has made an affirmative determination that increased subsidised imports are causing or threatening to cause material injury to the SACU industry and the Board considered it necessary or expedient that provisional measures be taken to prevent further injury being caused while the investigations are being carried out. A provisional countervailing duty can be applied up to a maximum of 200 days.

H1.2 Please indicate whether you are seeking the imposition of a provisional countervailing duty. If you are requesting the imposition of a provisional measure, explain why you consider the measure as a necessity.

PARAGRAPH I: GENERAL

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

CERTIFICATION

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

Date

.....

Signature of authorised person

_____

Name and title of authorised person **(in print)**

ANNEXURE A1
LETTER OF AUTHORISATION

Type the following letter on your company letterhead

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

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

Further details of the agent/representative are provided below:

Name of organisation:_____

Name of contact person:_____

Postal Address:_____

_____

_____

Physical Address:_____

_____

_____

Tel:(_____)_____ Fax:(_____) _____

Webpage:_____

Email:_____

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

Yours sincerely

_____
(duly authorised person)
(Name and Title)

ANNEXURE A
POWER OF ATTORNEY

I, the undersigned,

_____

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

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

SIGNED AT _____ THIS _____DAY OF_____202_ IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

_____
(Name)

AS WITNESSES:

1. _____

2. _____

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

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

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

11. NET EX-FACTORY PRICE (9&10) 12. Distribution costs *			
13. NET DELIVERED PRICE (11&12)			

- Supply a full Bill of materials, indicating the cost and volume of each material or component
* - Supply a detailed breakdown of the items.

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

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

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

MADE this 10th day of February, 2025.

TIROEAONE NTSIMA,
Minister of Trade and Entrepreneurship.