

Anti-Dumping, Countervailing, and Safeguard Duties

Quick Reference Guide



Customs and Excise

Quick Reference Guide to Anti-Dumping, Countervailing and Safeguard Duties

Preface

This guide serves as a quick reference for anti-dumping, countervailing, and safeguard duties.

It does not go into comprehensive technical and legal detail and should therefore not be used as a legal reference.

This guide has no binding legal effect.

For more information, assistance and guidance you may –

- visit the SARS website at **www.sars.gov.za**;
- contact the SARS National Service Centre (between 8am and 4:30pm South African time except on Wednesdays when the service centre can be called between 9am and 4:30pm) –
 - if calling locally, on 0800 00 7277;
 - if calling from abroad, on +27 11 602 2093;
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS service centre, preferably after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be e-mailed to **C&E_LegislativeComments@sars.gov.za**.

Legislative Policy: Customs and Excise
SOUTH AFRICAN REVENUE SERVICE
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1. Purpose

This guide serves as a quick reference for anti-dumping, countervailing, and safeguard duties.

2. Introduction

To protect domestic industries from unfair trade practices, trade remedies may be imposed in the form of anti-dumping duties for cases of dumping, countervailing measures for subsidised exports and safeguard measures for situations of disruptive competition. These measures may be imposed in addition to any applicable customs duty. Anti-dumping duties are always implemented as duties, while countervailing and safeguard measures may take the form of duties, quotas or both.

Under international law, trade remedies are governed by the World Trade Organization (WTO) General Agreement on Tariffs and Trade. Domestically, these remedies are governed by the International Trade Administration Act, 2002 (ITAC Act).

The Southern African Customs Union (SACU) maintains a common external tariff, meaning that all SACU member states, Botswana, Lesotho, Namibia, South Africa, and Eswatini apply the same customs duty rates on goods imported from outside the union.

In SACU, the role of the Tariff Board is fulfilled by the International Trade Administration Commission (ITAC) of South Africa. ITAC manages tariff applications and makes recommendations to the SACU Council regarding customs duties and trade remedies.

The Customs and Excise Act, 1964 (the Act)¹ provides for the imposition of trade remedies when requested by the Minister of Trade and Industry and Competition.

3. Customs and Excise Act, 1964

The following table outlines the **key provisions** in the Act that are relevant. This table is not exhaustive, and other provisions in the Act may apply.

CUSTOMS AND EXCISE ACT, 1964	
Section	
1	Definition of “Commissioner”, “Controller”, “customs duty”, “entry for home consumption”, “goods”, “home consumption”, “International Trade Administration Commission”, “Minister”, “SACU Agreement”, “this Act”.
1(5)	“goods under customs control”, “goods subject to customs control” or “goods under control of the Commissioner”
2	Commissioner to administer Act
3	Delegation of duties and powers of Commissioner
4	General duties and powers of officers

¹ See section 55 of the Act.

CUSTOMS AND EXCISE ACT, 1964	
Section	
5	Application of Act
6	Appointment of places of entry, authorised roads and routes etc
20	Goods in customs and excise warehouses
38	Entry of goods and time of entry
39	Importer and exporter to produce documents and pay duties
40	Validity of entries
43	Disposal of goods on failure to make due entry, goods imported or to be exported in contravention of any other law and seized and abandoned goods
44	Liability for duty
46	Origin of goods
47	Payment of duty and rate of duty applicable
49	Agreements in respect of rates of duty lower than general rates of duty and other agreements providing for matters requiring customs administration
55	General provisions regarding anti-dumping, countervailing and safeguard duties and measures
56	Imposition of anti-dumping duties
56A	Imposition of countervailing duties
57	Imposition of safeguard measures
57A	Imposition of provisional payment
59	Registration of persons participating in activities regulated by this Act
75	Specific rebates, drawbacks and refunds of duty
80	Serious offences and their punishment
83	Irregular dealing with or in goods
84	False documents and declarations
87	Goods irregularly dealt with liable to forfeiture

CUSTOMS AND EXCISE ACT, 1964	
Section	
88	Seizure
89	Notice of claim by owner in respect of seized goods
90	Disposal of seized goods
91	Administrative penalties
93	Remission or mitigation of penalties and forfeiture
113	Prohibition and restrictions
Schedule No. 2 to the Act	Anti-Dumping, Countervailing and Safeguard duties on imported goods
Schedule No. 3 to the Act	Industrial Rebates of Customs Duties
Schedule No. 4 to the Act	Rebates of Customs Duties, Excise Duties, Fuel Levy, Road Accident Fund Levy, Environmental Levy and Health Promotion Levy
Rules under the Customs and Excise Act, 1964	
Rules for section 46	Origin of goods
Rules for section 49	Binding origin determination (Section 49(8))
Forms	DA 59

The Act, Schedules to the Act, Rules and Forms are available on the **SARS website** as follows:

- The Act
Legal Counsel ⇒ Primary Legislation (the Act)
- Schedules to the Act
Legal Counsel ⇒ Primary Legislation ⇒ Schedules to the Customs and Excise Act, 1964
- Rules
Legal Counsel ⇒ Secondary Legislation ⇒ Rule Amendments
- Forms
SARS Homepage ⇒ Find a Form.

4. What is dumping?

Dumping refers to the introduction of imported goods into SACU at an export price that is below their normal value.² In simpler terms, when a company exports a product at a price lower than what it typically charges in its home market, it is considered to be “dumping” that product. Anti-dumping investigations are highly technical, as outlined in the ITAC Act and its regulations.

Dumping leads to local prices for similar goods manufactured in SACU being undermined, making it difficult for these local producers to compete. This ultimately harms manufacturers and jeopardises their market position in the region.

5. What is a subsidised export?

A subsidised export occurs when goods are exported into SACU from a country where the government or relevant authority has provided any form of financial aid or assistance related to the production, manufacture, transportation, or export of those goods. This includes situations where the government has forgone any revenue that would typically be owed.³

Governments often subsidise companies or industries by financing activities with loans that are not aligned with market rates, benefiting production or facilitating the exportation of goods through tax incentives. As a result, subsidised goods may be exported at a price lower than their actual production costs, causing harm to local manufacturers and the manufacturing sector in the SACU region.

6. What is disruptive competition?

Disruptive competition is marked by a sudden influx of imports of a good from outside the SACU region, which poses a threat of serious injury to the domestic SACU industry producing identical or similar competitive goods.

A safeguard measure is a remedy or procedure employed in response to disruptive competition.

7. What is the role of ITAC regarding dumping, subsidised exports, and disruptive competition?

Under the ITAC Act,⁴ ITAC must investigate and evaluate –

- applications related to alleged dumping or subsidised exports in or into SACU;
- applications concerning disruptive competition
- applications for the amendment of customs duties in SACU; and
- matters related to safeguard measures or the amendment of customs duties in SACU referred to it by the Minister of Trade and Industry, or which it considers on its own initiative.

A person may apply to ITAC for the amendment of customs duties, including an amendment in respect of goods imported into SACU from non-member countries, concerning-

² See section 1(1), read with 32(2)(a) and 32(2)(b) of the ITAC Act, for the technical meaning of “dumping”.

³ See section 32(2)(a) of the ITAC Act for the technical definition.

⁴ See section 16(1) of the ITAC Act read with section 26.

- antidumping duties;
- countervailing duties;
- safeguard duties; or
- the imposition of safeguard measures other than a customs duty amendment.

ITAC typically acts upon requests from industry stakeholders who demonstrate that the import of a particular good is injuring the local market and that this injury is likely to persist. ITAC may also act on its own initiative.

Based on the information provided, ITAC will issue a notice in the *Government Gazette* announcing its intention to initiate an investigation concerning imports of a specific good from a particular country of origin. The relevant authorities in that country will also be notified in writing of ITAC's intentions.

8. What is the role of the Minister of Trade and Industry and Minister of Finance?

The Minister of Trade and Industry has the authority to impose, withdraw or reduce a duty or measure upon receiving a recommendation from ITAC.

The Minister of Finance must by notice in the Gazette amend Schedule No. 2 to impose, withdraw or reduce a duty or measure in accordance with any request by the Minister of Trade and Industry.

9. What is the role of SARS regarding dumping, subsidised exports, and disruptive competition?

The role of SARS is to collect any provisional payments for any anti-dumping, countervailing, or safeguard duties that may be retrospectively imposed, administer bills of entry, assess and collect the correct duties, and enforce duties and quotas on imports that evade these obligations.

10. What is SARS' role while ITAC investigates?

After notifying its intention to investigate matters related to dumping, subsidised exports, or safeguard measures, ITAC may request that SARS⁵ impose provisional payments for anti-dumping, countervailing, or safeguard duties for a duration of 26 weeks.

The SARS Commissioner or delegate must issue a notice in the *Gazette* to impose a provisional payment for the goods under investigation for the specified period and amount as determined by ITAC's request.

11. What is the reason for imposition of a provisional payment and when must it be paid?

A provisional payment acts as security (similar to a provisional duty while the ITAC investigation is concluded) for any anti-dumping, countervailing, or safeguard duty that may

⁵ See section 57A of the Act.

be retrospectively imposed on goods under section 56, 56A, or 57. This provisional payment can be offset against the amount of any retrospective anti-dumping, countervailing, or safeguard duty owed.

The provisional payment must be made for the goods subject to it at the time of entry for home consumption.⁶

12. Can a provisional payment be withdrawn, extended or reduced with or without retrospective effect?

Yes. If ITAC requests it, the Commissioner must, by further notice in the *Gazette*, extend the period for which the provisional payment is imposed, or withdraw or reduce it, with or without retrospective effect, as specified in the request.⁷

13. What happens if no anti-dumping, countervailing, or safeguard duty is retrospectively imposed?

If no anti-dumping, countervailing, or safeguard duty is imposed before the expiry of the provisional payment period, the amount of that security will be refunded by the Commissioner.⁸

14. What happens if the amount of the provisional payment exceeds or is less than the amount of the duty retrospectively imposed?

If the amount of any provisional payment required on the goods —⁹

- exceeds the amount of any anti-dumping, countervailing, or safeguard duty retrospectively imposed, the difference will be refunded; or
- is less than the amount of the anti-dumping, countervailing, or safeguard duty imposed, the difference will not be collected.

15. If anti-dumping, countervailing, or safeguard duty is imposed, from which date is it made effective?

Any anti-dumping, countervailing, or safeguard duty takes effect from the date on which any provisional payment is imposed for the goods under section 57A provided it is imposed before the provisional payment period expires.¹⁰

16. Where can I find the goods and rates of duty on which anti-dumping, countervailing, or safeguard duties have been imposed?

The goods and corresponding rates of duty can be found in Schedule No. 2 of the Act. Goods listed in Schedule No. 2 will be liable to the appropriate anti-dumping, countervailing, or

⁶ See section 57A(3) of the Act.

⁷ See section 57A(2) of the Act.

⁸ See section 57A(4) of the Act.

⁹ See section 57A(5) of the Act.

¹⁰ See section 55(2)(b) of the Act.

safeguard duties specified in that Schedule upon entry (submission of a bill of entry) for home consumption if imported from a supplier or originating in a territory specified in that Schedule.

17. How are anti-dumping duties, countervailing duties, or safeguard duties imposed, withdrawn or amended?

The Minister of Finance may amend Schedule No. 2 by notice in the *Gazette* to impose an anti-dumping, countervailing, or safeguard duty in accordance with any request from the Minister of Trade and Industry under the provisions of the ITAC Act.

The Minister of Finance may also withdraw or reduce any anti-dumping, countervailing, or safeguard duty at the request of the Minister of Trade and Industry, with or without retrospective effect, and to the extent specified in the notice, or amend it from the date of such amendment or any later date as specified in the notice.¹¹

18. Can anti-dumping, countervailing, or safeguard duties be imposed on goods I enter under rebate of duty in Schedule No. 3 or 4?

Yes. If the goods you import and enter under any item specified in Schedule No. 3 or 4 are listed in Schedule No. 2, anti-dumping, countervailing, or safeguard duties will apply, even if the goods are entered under a rebate of duty.¹²

19. Can anti-dumping, countervailing, or safeguard duties be rebated on goods entered under any item of Schedule No. 3 or 4?

Yes. A rebate of any anti-dumping, countervailing, or safeguard duty may be granted for goods specified in Schedule No. 3 or 4 if it is explicitly stated in that item that the rebate includes such duties.¹³

20. When is a declaration of origin (DA 59) required?

This declaration is required for goods exported to the Republic of South Africa that are subject to anti-dumping, countervailing, or safeguard duties prescribed in Schedule No. 2 of the Act against imports from specific countries. It is also necessary for goods imported from a country other than the one for which the duty is imposed,¹⁴ including those imported from or through Botswana, Lesotho, Namibia, and Eswatini.¹⁵ This serves as a control measure for goods routed through countries where the duties do not apply.

If this requirement is not met for goods subject to any anti-dumping, countervailing, or safeguard duty prescribed in Schedule No. 2, the release of the goods will only be considered upon suitable security to cover such duties.

¹¹ See sections 56, 56A, and 57 of the Act.

¹² See section 55(4) of the Act.

¹³ See section 75(4) of the Act.

¹⁴ See section 46(5) of the Act, read with rule 46.04 of the rules to the Act.

¹⁵ See rule 120A.06 of the rules to the Act.

21. Are there any exemptions from the payment of anti-dumping, countervailing, or safeguard duty?

Exemptions from the payment of such duties may be granted for goods imported in circumstances or quantities that do not constitute regular importation for trade purposes.¹⁶

¹⁶ See section 55(5) of the Act.