

Jacobsens: Customs News Bulletin



Latest News

Draft Guidelines ("Amended Guidelines") pertaining to the administration of rebate item 460.03/0207.14.9/01.07 (Comments due by 21 December 2018)

Frozen bone-in cuts of the species *Gallus Domesticus*, classifiable in tariff subheading 0207.14.9 are subject to General (MFN), EFTA and MERCOSUR rates of duty of 37% when imported into the Southern African Customs Union (SACU).

Anti-dumping duties also apply to these cuts when imported from various countries. These anti-dumping duties range from 3,86% to 940c/kg, depending on the country of origin. See various anti-dumping duty provisions under item 201.02 in Part 1 of Schedule No. 2 to the Customs and Excise Act, No. 91 of 1964.

Resulting from negotiations with the United States of America and in the interest of AGOA benefits, the South African poultry industry agreed to allow for a quota-linked rebate of the full anti-dumping duty of 940c/kg on frozen bone-in cuts of the species *Gallus Domesticus*, classifiable in tariff subheading 0207.14.9, imported from or originating in the United States of America.

Following recent amendments, the International Trade Administration Commission of South Africa ("ITAC") has drafted amended Guidelines pertaining to the administration of rebate item 460.03/0207.14.9/01.07, which provides for a quota-linked rebate of the full anti-dumping duty on frozen bone-in cuts of the species *Gallus Domesticus*, classifiable in tariff subheading 0207.14.9, imported from or originating in the United States of America.

ITAC published the Amended Guidelines under Notice No. 725 of 2018 in *Government Gazette* No. 42053 of 23 November 2018.

Marked-up as well as non-marked-up versions of the Amended Guidelines have been made available by ITAC. The marked-up draft of the Amended Guidelines identifies every change that is being proposed by ITAC with additions indicated by underscoring and deletions indicated by strikethroughs to assist interested parties in better understanding the purpose of the proposed amendments and subsequently helping interested parties in the drafting of comments which is invited under Notice No. 725 of 2018.

The Amended Guidelines may be downloaded from https://www.gov.za/sites/default/files/42053_gen725.pdf.

Customs Tariff Applications and Outstanding Tariff Amendments

The International Trade Administration Commission (ITAC) is responsible for tariff investigations, amendments, and trade remedies in South Africa and on behalf of SACU.

Tariff investigations include: Increases in the customs duty rates in Schedule No. 1 Part 1 of Jacobsens. These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.

Reductions in the customs duty rates in Schedule No. 1 Part 1. These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.

Rebates of duty on products, available in the Southern African Customs Union (SACU), for use in the manufacture of goods, as published in Schedule No. 3 Part 1, and in Schedule No. 4 of Jacobsens. Schedule No. 3 Part 1 and Schedule No. 4, are identical in all the SACU Countries.

Rebates of duty on inputs used in the manufacture of goods for export, as published in Schedule No. 3 Part 2 and in item 470.00. These provisions apply to all the SACU Countries.

Refunds of duties and drawbacks of duties as provided for in Schedule No. 5. These provisions are identical in all the SACU Countries.

Trade remedies include: Anti-dumping duties (in Schedule No. 2 Part 1 of Jacobsens), countervailing duties to counteract subsidisation in foreign countries (in Schedule No. 2 Part 2), and safeguard duties (Schedule No. 2 Part 3), which are imposed as measures when a surge of imports is threatening to overwhelm a domestic producer, in accordance with domestic law and regulations and consistent with WTO rules.

To remedy such unfair pricing, ITAC may, at times, recommend the imposition of substantial duties on imports or duties that are equivalent to the dumping margin (or to the margin of injury, if this margin is lower).

Countervailing investigations are conducted to determine whether to impose countervailing duties to protect a domestic industry against the unfair trade practice of proven subsidised imports from foreign competitors that cause material injury to a domestic producer.

Safeguard measures, can be introduced to protect a domestic industry against unforeseen and overwhelming foreign competition and not necessarily against unfair trade, like the previous two instruments.

Dumping is defined as a situation where imported goods are being sold at prices lower than in the country of origin, and also causing financial injury to domestic producers of such goods. In other words, there should be a demonstrated causal link between the dumping and the injury experienced.

The International Trade Commission of South Africa (ITAC) also publishes Sunset Review Applications in relation to anti-dumping duty in terms of which any definitive anti-dumping duty will be terminated on a date not later than five years from the date of imposition, unless the International Trade Administration Commission determines, in a review initiated before that date on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, that the expiry of the duty would likely lead to continuation or recurrence of dumping and material injury.

The International Trade Administration Commission of South Africa (ITAC) has received the following application concerning the amendment of the Common External Tariff (CET) of the Southern African Customs Union (SACU). The Member States of the Southern African Customs Union are Botswana, eSwatini (previously Swaziland), Lesotho, Namibia and South Africa. In other words, South Africa and the BELN-Countries (previously BLNS-Countries).

Three separate applications have been dealt with, namely:

1. A notice to notify interested parties of the review of the description of tariff subheading 6210.10.20 (disposable underwear of fabrics of heading 56.03, with an intention to increase the rate of duty to 40% ad valorem, which is the same as for the residual subheading 6210.10.90, which will probably lead to the deletion of the 8-digit subheadings;
2. Increase in the general rate of customs duty on certain flat-rolled products of iron or non-alloy steel, plated or coated with tin ("tinplate"), classifiable under tariff subheadings 7210.11, 7210.12.10, 7210.12.90 and 7212.10 from free to 10%; and
3. Increase in the general rate of customs duty on certain tubes, pipes and hollow profiles, seamless, of iron or steel, classifiable under tariff subheadings 7304.19, 7304.23 and 7304.29 from 10% to 15%.

The following investigating officer at ITAC should be contacted:

- Review of subheading 6210.10.20 (Reference 33/2017): Mr Chris Sako, tel: (012) 394-3669, e-mail: csako@itac.org.za / Mrs Ayanda Gandhi, tel: (012) 394-3672, e-mail: endou@itac.org.za;
- Increase in the general rate of duty on flat-rolled products coated with tinplate (Reference 09/2018): Mr Njabula Mahlalela, tel: (012) 394-3684, e-mail: mmahlalela@itac.org.za; Ms P Busika, tel: (012) 394-3595, e-mail: pbusika@itac.org.za and/or Mrs N Makou, tel: (012) 394-3627, e-mail: nramphabana@itac.org.za; and
- Increase in the rate of customs duty on certain tubes and pipes and hollow profiles, seamless of iron or steel (Reference 09/2018): Mr Tsepiso Sejamoholo, tel: (012) 394-1605, e-mail: tsejamoholo@itac.org.za or Mr Mashudu Lukkwareni, tel: (012) 394-3661, e-mail: mlukkwareni@itac.org.za.

Written representations on all applications must be made within a period of four (4) weeks of the date of the notices, which were published in *Government Gazette* No. 42053 of 23 November 2018. Comments are thus due by Monday 24 December 2018.

List 08/2018 was published under Notice No. 726 of 2018, in *Government Gazette* No. 42053 of 23 November 2018.

ITAC also published a document titled: "Initiation of investigation into alleged dumping of polyethylene terephthalate (sic) (PET) imported from China", for which comments are also due by 24 December 2018. Polyethylene terephthalate (PET) is classifiable under tariff subheading 3907.6.

PET is subject to anti-dumping duty of 19,7% (when imported from or originating in the Republic of Korea), 54,1% (when imported from or originating in the Republic of India) or 75% (when imported from or originating in the Taiwan, Republic of China). Refer to anti-dumping duty items 207.01/3907.61.90/01.08 to 207.01/3907.69.90/03.08.

Notice No. 727 of 2018 was published in *Government Gazette* No. 42053 of 23 November 2018.

Enquiries may be directed to the investigating officer, Mr Siphumelele Mkwanazi at tel: (012) 394 -3742 or Ms Portia Mathebula at tel: (012) 394-1456.

Customs Tariff List 07/2018 was published in *Government Gazette* No. 41928 of 28 September 2018 under Notice No. 602 of 2018.

Customs Tariff Amendments

With the exception of certain parts of Schedule No. 1, such as Schedule No. 1 Part 2 (excise duties), Schedule No. 1 Part 3 (environmental levies), Schedule No. 1 Part 5 (fuel and road accident fund levies), the other parts of the tariff are amended by SARS based on recommendations made by ITAC resulting from the investigations relating to Customs Tariff Applications received by them. The ITAC then investigates and makes recommendations to the Minister of Trade and Industry, who requests the Minister of Finance to amend the Tariff in line with the ITAC's recommendations. SARS is responsible for drafting the notices to amend the tariff, as well as for arranging for the publication of the notices in *Government Gazettes*.

Parts of the South African Tariff are not amended resulting from ITAC recommendations.

These parts (for example Parts of Schedule No 1 other than Part 1 of Schedule No. 1), must be amended through proposals that are tabled by the Minister of Finance, or when the Minister deems it expedient in the public interest to do so.

Once a year, big tariff amendments are published by SARS, which is in line with the commitments of South Africa and SACU under international trade agreements.

Under these amendments, which are either published in November or early in December, the import duties on goods are reduced under South Africa's international trade commitments under existing trade agreements.

Various amendments to the Common External Tariff (CET) of the Southern African Customs Union (SACU) were published in *Government Gazette* No. 42036 of 16 November 2018.

Under the first notice (Notice R. 1234), rebate provisions 306.15/2815.12/01.06 and 306.15/2815.12/02.06 have been created for sodium hydroxide used in the extraction of copper and nickel, subject to a permit from ITAC as recommended in ITAC Report 592.

Temporary rebate provisions have also been created for the importation of certain flat-rolled steel products to be used in the manufacture of various products in the automotive industry, subject to an import permit by ITAC, as recommended in ITAC Report No. 590.

The notice to implement this recommendation (Notice R. 1233) was published in *Government Gazette* No. 42036 of 16 November 2018.

Consequential to the amendment above, the safeguard duty provisions on flat-rolled steel products have been amended to exclude flat-rolled steel products which qualify for the rebate provisions from payment of safeguard duties.

This notice (Notice R. 1232) was published in *Government Gazette* No. 42036 of 16 November 2018.

Customs Rule Amendments

The Customs and Excise Act is amended by the Minister of Finance. Certain provisions of the Act are supported by Customs and Excise Rules, which are prescribed by the Commission of SARS. These provisions are numbered in accordance with the sections of the Act. The rules are more user-friendly than the Act, and help to define provisions which would otherwise be unclear and difficult to interpret.

Forms are also prescribed by rule, and are published in the Schedule to the Rules.

There were no amendments to the Customs and Excise Rules at the time of publication. The latest amendment to the Customs and Excise Rules (DAR 177) was published in *Government Gazette* No. 41798 of 27 July 2018.

Contact Us

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