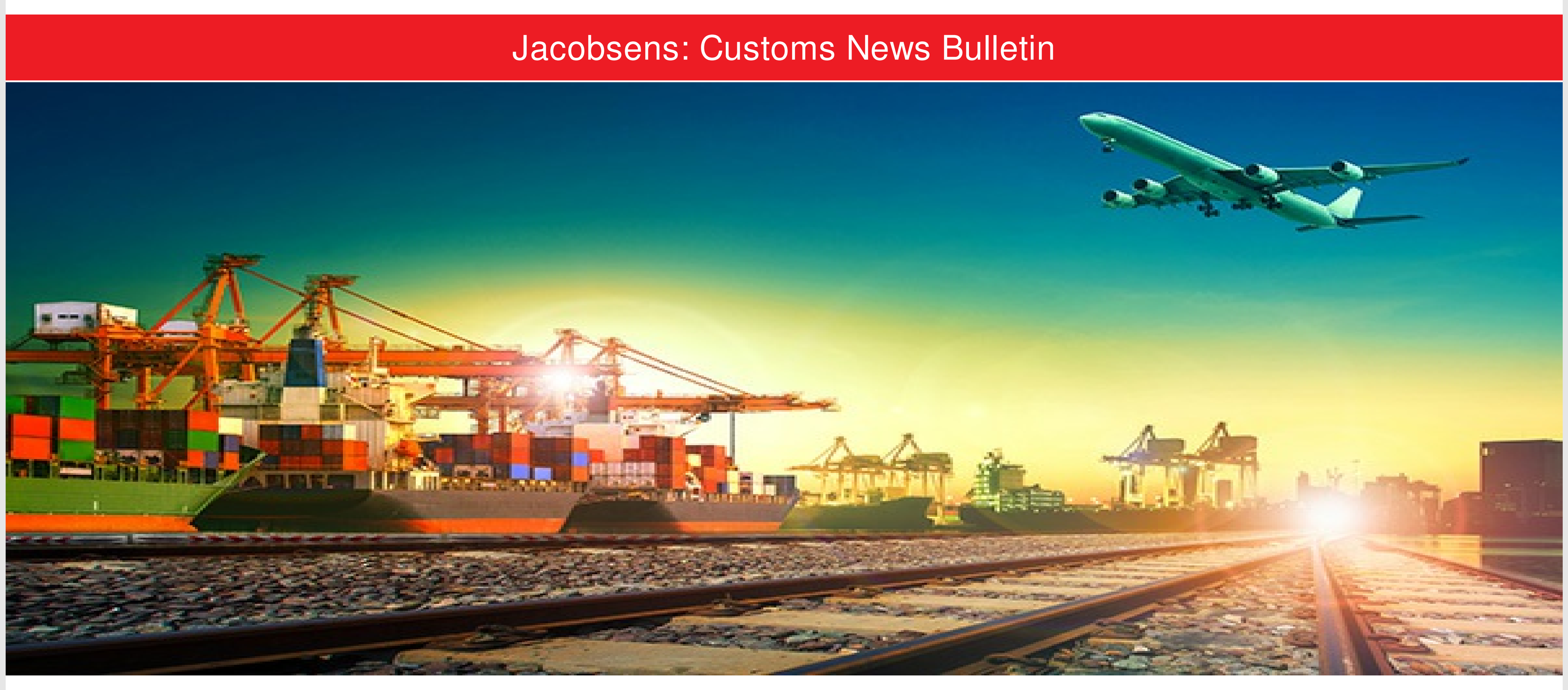
Jacobsens: Customs News Bulletin



Latest News

BREXIT: Deadlock. What next

Britain was supposed to leave the European Union on Friday (29 March 2019), as was agreed more than two years ago. British citizens voted in favour of leaving the EU in a referendum on 23 June 2016. The margin in favour of the leavers was narrow: 52% to 48%.

From the beginning it was clear that there would be many stumbling blocks but closer to the day, it became clear that the situation was much more chaotic than was initially expected.

David Cameron, the then prime minister of the UK, was the leader of the remainers at the time of the referendum. He resigned almost immediately and Theresa May became the new British prime minister.

One of the main reasons for the unhappiness leading to Brexit was the immigration policy in many EU countries that made it difficult for the UK to control EU immigration. The UK was a favourite destination for many immigrants and refugees due to the fact that the English language is the main UK language, and a language that most people across the globe can speak.

When Theresa May set her Brexit strategy early in 2017, namely that Britain will leave the EU to allow it to control EU immigration she said: "No deal for Britain is better than a bad deal." At that time May seemed confident, and although there were many uncertainties about the way forward no one knew what would follow.

The process to leave the EU was started by the approval of the UK parliamentary bill to trigger Article 50 of the Lisbon Treaty, which deals with the process for countries leaving the EU early in March 2017. This was followed by a letter to EU President Donald Tusk which formally informed the EU parliament of Britain's intention to leave the EU. The two-year timetable for Brexit on 29 March 2019 was then initiated.

From then the road for May was bumpy, and she lost her majority in the UK parliament in an election early in June 2017. More elections and a stormy period for the UK parliament and politics followed.

Under the terms of an extension agreed by the EU parliament in Brussels last week Brexit will now not happen until the 12th of April 2019, if there is no deal, or until 22 May 2019 if there is a deal.

The matter can even be drawn out beyond 22 May 2019. In an interview with the Guardian, Dominic Grieve, former Conservative Attorney General, said that the extension until 22 May 2019 is a technical extension. He said, if the UK has not passed the withdrawal agreement and the political declaration by then, the UK will leave the EU without a deal. But until then the UK still has the option to request a longer extension, for a different sort of Brexit, he said.

This is however just one opinion. According to others no one can be sure that the EU would grant a second extension.

As it stands the UK parliament is voting yet again and Theresa May faces another defeat as UK MP's debate the withdrawal agreement for the third time.

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.

ITAC published List 02/2019 under Notice No. 178 of 2019. Under the Notice there were applications for an increase in the general rate of customs duty on certain aluminum plates, sheets, strips and foil products classifiable under tariff heading 76.06 and 76.07, from free of duty to WTO bound rate of 15% ad valorem as well as an increase in the general rate of customs duty on crystalline silicon photovoltaic modules or panels classifiable under tariff subheading 8541.40.10, by way of creating an 8-digit tariff subheading, from free of duty to 10% ad valorem.

Notice No. 178 of 2019 was published in *Government Gazette* No. 42337 of 29 March 2019.

Contact the following persons for more information about the individual applications:

- Aluminum plates, sheets, strips and foil products classifiable under tariff heading 76.06 and 76.07:

Enquiries: ITAC Ref: 16/2018, Mr. Tshepiso Sejamoholo and Ms. Diphetogo Rathete, Tel: 012 394 1605/43683 or alternatively e-mail tsejamoholo@itac.org.za or drathete@itac.org.za.

- Crystalline silicon photovoltaic modules or panels classifiable under tariff subheading 8541.40.10:

Enquiries: ITAC Ref: 13/2018, Ms. Diphetogo Rathete and Mr. Pfarelo Phaswana, Tel: 012 394 3683/3628 or alternatively e-mail drathete@itac.org.za or pphaswana@itac.org.za.

Comments on the applications are due on 12 April 2019.

ITAC also published two documents titled "International Trade Administration Act: Economic Partnership Agreement guidelines and conditions to a bilaterial safeguard application between European Union and SADC states" and "International Trade Administration Act: Guidelines, rules and conditions pertaining to caustic soda imported in terms of rebate items 306.15/2815.12/01.06 and 306.15/2815.12/02.06 for the extraction of copper and nickel" under Notices 177 and 179 in *Government Gazette* No. 42337 of 29 March 2019.

List 01/2019 was published under Notice No. 93 of 2019, in *Government Gazette* No. 42240 of 22 February 2019.

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.

Notices to implement various tariff amendments with effect from 1 April 2019 and 3 April 2019 have been published in *Government Gazette* No. 42338 of 29 March 2019. The Notice numbers were R. 500 to R. 506 and R. 515.

All the amendments relate to the Budget Proposals of the Minister of Finance on 20 February 2019.

The amendments relate to:

- the imposition of ad valorem excise duty on computers with a screen size exceeding 45 cm and gaming consoles with images produced on any external screen or surface; as well as
- the exemption of items such as the exemption/zero-rating of the following items from VAT: sanitary pads, bread flour and cake flour and pantyliners;
- an increase in the rate of the general fuel levy and road accident fund levy on petrol and diesel; and
- an increase of 10c/g in the rate of the health promotion levy on sugary beverages from 2.1c/g per 100ml to 2.21c/g per 100ml.

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 Rule amendments at the time of publication. The latest rule amendments were published in *Government Gazette* No. 42218 of 8 February 2019. (Refer to the Bulletin of 8 February 2019 for more information).

The SARS reference number for the last Rule amendment was DAR 180.

Contact Us

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