Jacobsens: Customs News Bulletin

Latest News

SUNSET REVIEWS ON ANTI-DUMPING DUTIES IN THE SOUTHERN AFRICAN CUSTOMS UNION (SACU)

Anti-dumping duties on certain commodities imported in or originating in certain territories are imposed as trade remedies in the Southern African Customs Union (SACU) subject to the WTO Agreement on Dumping.

In accordance with the provisions in section 53.1 of the Anti-Dumping Regulations (ADR) to the International Trade Administration Act No. 71 of 2002, any definitive anti-dumping duty "shall be terminated on a date not later than five years from its Imposition", unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and material injury.

From time to time, the International Trade Administration Commission of South Africa (ITAC) publish a list of anti-dumping provisions that are due to expire to initiate reviews.

There are currently anti-dumping duty provisions on garden picks, spades and shovels, rakes and forks classifiable under tariff heading 8201.30.03, 8201.10.10, 8201.30.90 and 8201.90.20 respectively originating in or imported from the People's Republic of China.

On 21 July 2017, ITAC notified interested parties through Notice No. 546 of 2017 in *Government Gazette* No. 40998, that unless a substantiated request is made by the Southern African Customs Union (SACU) industry indicating that the expiry of the anti-dumping duties against imports of garden picks, spades and shovels, rakes and forks originating in or imported from the People's Republic of China (PRC) would likely lead to the continuation or recurrence of dumping and material injury, the anti-dumping duties on garden picks, spades and shovels, rakes and forks originating in or imported from the PRC will expire on 17 October 2018. A detailed response to the Commission's sunset review questionnaire was received from Ussher Inventions (Pty) Ltd (t/a Lasher Tools) on 17 April 2017.

On the basis of information submitted by the applicant, ITAC found that there was prima facie proof indicating that the expiry of the anti-dumping duties would likely lead to the recurrence of material injury.

In response to this, ITAC published Notice No. 601 of 2018 to give notice of the initiation of the sunset review of the anti-dumping duties on the products in question.

Notice No. 601 of 2018 was published in *Government Gazette* 41928 of 28 September 2018. Any responses or comments should be submitted by 28 October 2018 to:

The Senior Manager: Trade Remedies II, International Trade Administration Commission, Block E – The DTI Campus, 77 Meintjies Street, SUNNYSIDE, PRETORIA (Private Bag X753, PRETORIA, 0001).

Enquiries may be directed to the investigating officers, Mr. Pfananani Rodney Muumba at +27 12 394 3689 or Ms. Portia Chuma at + 27 12 394 5848 or at fax number +27 12 394 0518.

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 (ITAC) has received and published an application for an increase in the rate of customs duty on combined refrigerator-freezers fitted with external doors, with a total capacity of more than 400 litres, classifiable in tariff subheading 8418.10, from 25% to 30% ad valorem.

The application (list 07/2018) was published in *Government Gazette* No. 41928 of 28 September 2018 under Notice No. 602 of 2018. The ITAC reference number is 04/2018.

For enquiries or comments kindly contact Messrs Pfarelo Phaswana or Njabulo Mahlalela at telephone numbers (012) 394 3628 or (012) 394 3684 or by e-mail pphaswana@itac.org.za or nmahlalela@itac.org.za.

Customs Tariff Application List 06/2018 was published in *Government Gazette* No. 41913 of 21 September 2018 under Notice No. 571 of 2018.

Comments on Notice No. 602 of 2018 (List 07/2018) are due by 25 October 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 is 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.

The rates of duty on wheat and wheaten flour classifiable in tariff subheading 1001.91, 1001.99, 1101.00.10 and 1101.00.90 have been increased from 29,85c/kg and 44,77c/kg to 49,07c/kg and 73,61c/kg respectively, in terms of the existing variable tariff formula as recommended in ITAC Minute 11/2018.

The amendments to the Southern African Customs Union (SACU) Tariff were published in the *Government Gazette* of 19 October 2018. The publication details were not available at time of publication.

The loose-leaf amendments will be sent to subscribers under cover of Supplement 1110.

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

Havandren Nadasan
Jacobsens Editor
Phone: 031 268 3510
jacobsens@lexisnexis.co.za

Leon Marais
Independent Customs Consultant
Phone: 053 203 0727
leon@itacs.co.za