



Latest News

BREXIT: What next for SACU and the UK?

As it stands the UK will leave the EU without a deal in a fortnight's time - on 29 March 2019.

The UK Government is seeking to continue current arrangements as the UK leaves the EU on 29 March 2019.

In this regard the UK has agreed with many countries that the best way to ensure the status quo of relationships is through a short form agreement which refers to the relevant provisions of the underlying EU third country agreement with relatively few necessary modifications. (The advantages of this form agreement are set out in a UK Parliamentary Report).

Some agreements have also been drafted in long form to reflect these wishes. The UK-ESA EPA is an example of a long form agreement.

Until 29 March 2019, the trading relationship of the UK with the Southern African Customs Union (SACU) Botswana, Lesotho, eSwatini, Namibia and Swaziland as well as Mozambique will be governed by the Agreement establishing a framework for an Economic Partnership Agreement between the Southern African Development Community States, on the one part, and the European Community and its Member States, on the other part (the SADC-EU EPA).

In the SADC EPA, commitments on tariffs for both the UK and SACU countries have been transitioned without changes. This means that tariff preferences applied by the UK to goods from Botswana, eSwatini, Lesotho, Namibia and South Africa will remain the same as those applied by the EU under the existing agreement, and likewise those countries will continue to apply the same preferences to goods from the UK that they are currently applying to goods from the EU.

In cases where import duties remain subject to staged tariff reductions, reductions will continue at the same pace as scheduled in the existing EPA.

Rules of origin

In free trade agreements, Rules of Origin are used to determine the economic nationality of a good. To qualify for preferential (lower) tariff rates under the agreement, a commodity must "originate" in the territory of one of the parties to the agreement.

As a member of the EU, all UK content is currently considered as "originating" in the EU and UK exports are designated as being of "EU origin". This means that materials from, and processing in, the UK and the rest of the EU can be used interchangeably in bilateral trade with existing EU trade agreement partners. This will no longer be the case when existing EU trade agreements stop applying to the UK.

At this point, the designation of UK exports will shift from "EU" originating, to "UK" originating and EU content will (unless specific provision is made in new agreements) no longer count towards meeting the origin requirements for preferential treatment for either party.

To address these implications and to provide maximum continuity for business, it has been agreed in the SADC-UK Agreement that EU content and processing can be recognised (i.e. cumulated) in UK and ESA exports to one another. The cumulation arrangements are set out in detail in the Title II (Definition of the concept of 'originating products') of the Rules of Origin Protocol and subject to satisfying the conditions specified in the agreement.

If cumulation of EU content for the UK and the SADC countries were not permitted under the SADC-UK Agreement, some UK and SADC based exporters might find themselves unable to access preferences as they are currently able to under the SADC-EU EPA Agreement. UK exporters to the SACU/SADC who rely on EU content might have to revert to paying Most Favoured Nation (MFN) tariff rates, if they continued using EU content, or they might have to review and reassess their existing supply and value chains as a result of this change. The impact would vary across sectors.

The biggest challenge for the UK will not be maintaining its relationships with third countries, but its intra-EU relationships.

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.

There were no applications for amendments to the SACU Common External Tariff at the time of publication.

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.

Provisional payments are imposed on clear float glass, classifiable in tariff subheadings 7005.29.17; 7005.29.23; 7005.29.25 and 7005.29.35, originating in or imported from Saudi Arabia (23.9%) and from the United Arab Emirates (38.1%) as recommended in ITAC Report 599.

The notice (Notice R. 448) to implement the recommendation was published in *Government Gazette* No. 42324 dated 22 March 2019. The SARS and Jacobsens reference is PP/152.

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.

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