



Latest News

EXTENSION OF THE EXPORT CONTROL ON FERROUS AND NON-FERROUS WASTE AND SCRAP METAL AND THE POSSIBLE INTRODUCTION OF AN EXPORT TAX

On 10 May 2013, the Minister of Economic Development issued a Trade Policy Directive to the International Trade Administration Commission of South Africa (ITAC) in terms of Section 5 of the International Trade Administration (ITA) Act No. 71 of 2002 (the ITA Act) on the exportation of ferrous and non-ferrous waste and scrap metal.

Various notices were published to extend the policy directive first to 30 June 2019, and recently another notice (Notice 257 of 2019) the Minister indicated that he was considering extending the Policy Directive until March 2020, to enable the National Treasury, the Department of Trade and Industry and the Department of Economic Development to explore the introduction of an export tax on ferrous and non-ferrous waste and scrap metal and its implications for the Directive.

In Government Notice No. 257 of 2 May 2019, Stakeholders and interested parties were invited to submit representations and comments regarding the proposed extension of the Policy Directive before the Minister decided whether to extend the Policy Directive.

Following consideration of the matter and comments, the Minister published Notice No. 258 of 24 May 2019 to extend the Policy Directive from 30 June 2019 until 31 March 2020.

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 received an application to increase the rate of customs duty on polyethylene terephthalate ("PET") classifiable under tariff subheadings 3907.61.10 and 3907.69.10, from free of duty, and 3907.61.90 and 3907.69.90, from 10% ad valorem, to 15% ad valorem.

The latest application (List 03/2019) was published under Notice No. 239 of 2019 in *Government Gazette* No. 42417 of 26 April 2019.

[ITAC reference: (17/2018); Enquiries: Siphon Tshabalala, E-mail: stshabalala@itac.org.za, Tel: (012) 394 3739 or Dolly Ngobeni, E-mail: dngobeni@itac.org.za, Tel: (012) 394 3667].

Comments were due on Friday 24 May 2019.

ITAC also published the Sunset review of anti-dumping duties on disodium carbonate for comments by 27 May 2019.

The application relates to the anti-dumping duties ranging from 8% to 40% on disodium bicarbonate (soda ash), classifiable under tariff subheading 2836.20 imported from the United States of America in anti-dumping duty item 206.01/2836.20/01/06 to 206.01/2836.20/03.06.

In accordance with the provisions in Article 53.1 of the Anti-Dumping Regulations, the anti-dumping duty will be terminated (on a date not later than five years from the date of 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, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. This was the reason for the publication of the sunset review and manufacturers of soda ash in the Southern African Customs Union are therefore advised to comment on the application.

The application was published in *Government Gazette* No. 42417 under Notice No. 240 of 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.

Various amendments were published on 24 May 2017 to amend the Southern African Customs Union (SACU) Common External Tariff (CET).

Various parts of the tariff were amended:

- to clarify the scope of computers that are subject to payment of ad valorem excise duty (with effect from 1 April 2019) (Schedule 1 Part 1 and Schedule 1 Part 2B);
- to increase the rate of customs duty on wheat and wheat flour with immediate effect;
- to increase the rate of duty on "disposable underwear" to 40% (in Part 1 of Schedule No. 1);
- to impose safeguard duties on certain flat-rolled steel products classifiable in tariff headings 72.08 and subheadings 7211.14, 7211.19, 7225.30, 7225.40, 7225.99, 7226.91 and 7266.99 imported from Chinese Taipei (Taiwan) (with immediate effect until 10 August 2020); and
- to exempt aluminium bars, rods and profiles of subheading 7604.29 for use in the manufacture of stabilisation fins from payment of duty.

The amendments were published in *Government Gazette* No. 42475 of 24 May 2019, under Notices numbers R. 747 to R. 753.

Refer to the Jacobsens Customs Watch dated 24 April 2019 for more information.

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 Rules to the Customs and Excise Act at the time of publication.

The reference number of the latest Rule amendments was DAR/183. Under the amendment, Forms DA185 and some of its annexures were amended to provide for certain changes in respect of the Health Promotion Levy on Sugary Beverages.

The Notice (R. 562) was published in *Government Gazette* No. 42381 of 5 April 2019 (DAR/183).

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