



Latest News

DRAFT REGULATIONS FOR HAZARDOUS CHEMICAL AGENTS (Comments due by 14 December 2018)

In the previous Bulletin we reported on the publication of the sixth National Greenhouse Gas Inventory Report (NIR) by the Department of Environmental Affairs for comments (by 14 October 2018).

This week we will report on the publication of the draft regulations for hazardous chemical substances, which are regulations to the Occupational Health and Safety Act, 1993.

The Draft Regulations for Hazardous Chemical Agents was published to implement changes to align the regulations with the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) of the United Nations (the UN Purple Book), to which South Africa is a signatory.

The regulations will apply to an employer (or a self-employed person) who carries out work at a workplace which may expose any person to a Hazardous Chemical Agent at the workplace and a manufacturer, importer, supplier or retailer of chemicals that are intended for use at a workplace.

Prohibited agents are listed in Table 1 of Annexure 2.

The following are prohibited hazardous chemical agents listed in Table 1 of Annexure 2:

- 4-aminobiphenyl (HS 2017 subheading 2921.49);
- Benzidine (HS 2017 subheading 2921.59);
- 2-naphthylamine and its salts (HS 2017 subheading 2921.45);
- 4-nitrobiphenyl (HS 2017 subheading 2904.20);
- polybiphenyl, chlorinated (excluding MONO- and DICHLORINATED BIPHENYLS) (HS 2017 subheading 2903.99.20);
- Polychlorinated terphenyls (PCT) (HS 2017 subheading 2903.99.25); and
- PREPARATIONS with a PCB or PCT content higher than 0.01% by weight.

The maximum exposure limits for hazardous chemical agents are listed in Table 2 of Annexure 2 (pages 24 to 27), while the restricted limits for hazardous chemical agents are listed in Table 3 of Annexure 2 (pages 28 to 54 of Notice R. 950 of 14 September 2018).

Other important changes are:

- Regulation 3 - Information, Instruction and Training;
- Regulation 14 - Classification of an HCA;
- Regulation 14A - Safety Data Sheet (SDS);
- Regulation 14B - Labelling of an HCA and
- Regulation 14C - Packaging of an HCA and not regulations where no changes have been made such as Regulation 5 Risk Assessment of Exposure, Regulation 6 Air Monitoring or Regulation 7 Medical Surveillance

The safety data sheet (SDS) explains what one needs to know to handle a chemical safely. To be compliant with the UN GHS. All safety data sheets must have the GHS-specified 16 section format and include certain types of information in each section. This standard format helps ensure that all employers and employees understand the chemical, its hazards, and the precautions the user must take to stay safe. (Refer to Regulation 14A(2)). Section 14 deals with (dangerous) transport information.

Many of these hazardous chemical agents are also dangerous goods. There are however differences between the two groups: Hazardous substances (dealt with by the UN Purple Book) are classified based only on health effects (whether they are immediate or long term), while dangerous goods (dealt with by the UN Orange Book) are classified according to their immediate physical or chemical effects, such as fire, explosion, corrosion and poisoning, affecting property, the environment or people. SA's Hazardous substances legislation are regulations to the Occupational Health and Safety Act of the Department of Labour while (the transport of) dangerous goods are regulated by the National Road Traffic Act, 1996 of the SA Department of Transport.

The Regulations for Hazardous Chemical Agents, 2018 will replace the Regulations for Hazardous Chemical Substances, 1995 published under Government Notice No. R. 1179 of 25 August 1995.

Comments should be submitted to:
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For attention: Elize Lourens (elourens@labour.gov.za) or David Tsabalala (davidtsabalala2@labour.gov.za).

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 acrylic resins classifiable under tariff subheadings 3906.90.20 and 3208.20.90 from free of duty and 10% ad valorem respectively, to 15% ad valorem.

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

Comments are due by 12 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 following amendments to the SACU Common External Tariff were published in the *Government Gazettes* of 21 and 27 September 2018:

Note 3 to Schedule No. 5 has been amended to allow for a drawback of safeguard duty on certain hot-rolled steel products in terms of drawback item 521.00 as recommended in ITAC Report 587.

The safeguard duty provisions in Part 3 of Schedule No. 2 have also been amended to exclude the flat-rolled steel products in question from payment of safeguard duty with reference to rebate item 470.03 as recommended in ITAC Report 587.

These amendments were published under Notices R. 981 to R. 983 of 21 September 2018.

The following amendments were published in a *Government Gazette* of 28 September 2018:

The rates of duty on wheat and wheat flour classifiable in tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 have been reduced from 64,06c/kg and 96,09c/kg to 29,85c/kg and 44,77c/kg respectively, in terms of the existing variable tariff formula as recommended in Minute 09/2018.

Provision is made for the imposition of safeguard duty on frozen bone-in chicken portions of fowls of the species *Gallus domesticus*, classifiable under subheading 0207.14.9 at a rate of safeguard duty of 35.3%.

The rates of safeguard duty will be reduced as follows to rate of 15%:

28 September 2018 – 11 March 2019 - 35,3%;
12 March 2019 – 11 March 2020 - 30%;
12 March 2020 – 11 March 2021 - 25%;
12 March 2021 – 11 March 2022 - 15.

The safeguard duty will expire on the 12th of March 2022.

The loose-leaf amendments will be sent to subscribers under cover of Supplement 1109.

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.

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