Jacobsens: Customs News Bulletin

Latest News

WHAT THE CARBON TAX ACT WILL MEAN FOR SOUTH AFRICA IN 2019

A proposed carbon tax was announced "to enable South Africa to meet its nationally-determined contribution (NDC) commitments in terms of the 2015 Paris Agreement (on climate change), and to reduce greenhouse gas emissions" in South Africa in line with the National Climate Change Response Policy and National Development Plan.

Following the approval of several draft Bills, Cabinet approved the submission of the Carbon Tax Bill to Parliament.

According to a media statement that was issued on 21 November 2018, it was mentioned in tabling the Carbon Tax Bill, the Minister of Finance, stated that "climate change poses the greatest threat facing humankind, and South Africa intends to play its role in the world as part of the global effort to reduce greenhouse gas emissions". The Carbon Tax Bill, and related measures, will enable South Africa to meet its targets as agreed in the Paris Agreement.

According to the preamble of the Bill, which will become the Carbon Tax Act, the purpose of the Bill is "to provide for the imposition of a tax on the carbon dioxide (CO) equivalent of greenhouse gas emissions; and to provide for matters connected therewith".

According to Wikipedia, a "carbon tax is a tax levied on the carbon content of fuels. It is a form of carbon pricing". Wikipedia further states that Revenue obtained via the tax is "however not always used to compensate the carbon emissions on which the tax is levied". This could be the case in South Africa as well, and that South Africa's climate change policy may be just an excuse to collect revenue.

Internationally, the primary purpose of carbon tax is to lower greenhouse-gas emissions by levying a fee on fossil fuels based on how much carbon they emit when burned, to reduce the fees, utilities, business and individuals attempt to use less energy derived from fossil fuels.

Section 3 specifies which persons/entities are liable for the Carbon Tax. According to the Explanatory Memorandum, liability for carbon tax arises for every entity that conducts an activity and emits Greenhouse Gas (GHG) emissions above the threshold which is listed in Schedule 2 of the Bill, which will probably become the Carbon Tax Act in 2019.

It is further stated that these thresholds are in line with the stipulated thresholds in Annexure 1 of the National Greenhouse Emission Reporting Regulations (NGERRs) of the Department of Environmental Affairs (DEA) which is based mainly on energy production, energy consumption and greenhouse gas emissions. The NGERR requires only entities engaged in activities within the indicated IPCC source categories and above the threshold (total installed capacity for this activity is equal or above the threshold) to be data providers.

According to the Explanatory Memorandum, the carbon tax covers all direct stationary and non-stationary GHG emissions. These emissions relate to production and use of energy (i.e. fuel combustion and gasification) and non-energy industrial processes. The carbon tax will apply to direct emissions in the following categories as specified in the NGERs:

- Fuel combustion, which deals with emissions released from fuel combustion activities;
- Fugitive emissions from fuels, which deals with emissions mainly released from the extraction, production, processing and distribution of fossil fuels; and
- Industrial processes emissions, which deals with emissions released from the consumption of carbonates and the use of fuels as feedstocks or as carbon reductants, and the emission of synthetic gases in particular cases.

Section 6 of the Bill deals with the calculation of the Carbon Tax.

Section 10 provides for a tax-free allowance to entities that are trade exposed and sensitive to potential international competitiveness. According to the Explanatory Memorandum potential adverse impacts on industry competitiveness are addressed by providing an additional maximum 10 per cent tax-free trade exposure allowance, which is sector-based and includes exports and imports. The Explanatory Memorandum further states that trade intensity will be used as a proxy for trade exposure which will be determined at a sector or subsector level based on classification under the Convention on the Harmonised Commodity Description and Coding System (Harmonised System or simply "HS") of the World Customs Organization (WCO) and available national data for the corresponding production per sector. (In instances where adequate production data is not available, the closest proxy for production will be considered, according to the Explanatory Memorandum). The trade intensity of a product/s for a particular sector/subsector will be based on the sum of the value of imports and exports divided by production. The trade intensity will be calculated for the sector or subsector, using the formula on page 25 of the Explanatory Memorandum.

In terms of section 15, subsection (1) and (2): "The Commissioner must administer the provisions of this Act as if the carbon tax were an environmental levy as contemplated in section 54A of the Customs and Excise Act, 1964 (Act No. 91 of 1964), that must be collected and paid in terms of the provisions of that Act"; and "For the purposes of subsection (1), administrative actions, requirements and procedures for purposes of submission and verification of accounts, collection and payment of the carbon tax as an environmental levy or the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Customs and Excise Act, 1964".

Calculation of the tax is according to a complex formula rather than on specific products.

In terms of section 17, a taxpayer must submit yearly environmental levy accounts and payments as prescribed by rule in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), for every tax period.

Schedule No. 3 to the Customs and Excise Act will be amended to provide for the imposition of the carbon tax.

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 of South Africa (ITAC) has received the following application concerning the amendment of the Common External Tariff (CET) of the Southern African Customs Union (SACU). The Member States of the Southern African Customs Union are Botswana, eSwatini (previously Swaziland), Lesotho, Namibia and South Africa. In other words, South Africa and the BELN-Countries (previously BLNS-Countries).

An application was received for an increase in the general rate of Customs duty on frozen meat and edible offal of fowls of the species *Gallus domesticus*, with specific reference to bone-in portions classifiable under tariff subheading 0207.14.9 and boneless cuts classifiable under tariff subheading 0207.14.1 from 37 per cent ad valorem and 12 per cent ad valorem, respectively, to 82 per cent ad valorem.

The following investigating officers at ITAC should be contacted:

- Reference (10/2018): Mr Jacob Mtimkulu, e-mail: jmtimkulu@itac.org.za / Mr Oathotse Madito, e-mail: omadito@itac.org.za / Ms Dolly Ngobeni, e-mail: dngobeni@itac.org.za or Ms Manini Masithela, e-mail: mmasithela@itac.org.za.

Written representations on all applications must be made within a period of four (4) weeks of the date of the notices, which were published in *Government Gazette* No. 42068 of 30 November 2018. Comments are thus due by Friday 28 December 2018.

List 09/2018 was published under Notice No. 760 of 2018, in *Government Gazette* No. 42068 of 30 November 2018.

Enquiries may be directed to the investigating officer, Mr Siphumelele Mkwanazi at tel: (012) 394 -3742 or Ms Portia Mathebula at tel: (012) 394-1456.

Customs Tariff List 08/2018 was published under Notice No. 726 in *Government Gazette* No. 42053 of 23 November 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 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 to the Common External Tariff (CET) of the Southern African Customs Union (SACU) were published in the *Government Gazette* No. of 30 November 2018.

Temporary rebate provisions have been created for the importation of certain flat-rolled steel products to be used in the manufacture of various products in the automotive industry, subject to an import permit by ITAC, as recommended in ITAC Report No. 586.

The notices to implement these recommendations were published in a *Government Gazette* of 30 November 2018.

Consequential to the amendment above, the safeguard duty provisions on flat-rolled steel products have been amended to exclude flat-rolled steel products which qualify for the rebate provisions from payment of safeguard duties.

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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