



Latest News

BREXIT Update: 5 April 2019

On Friday 29 March, the day the UK was supposed to leave the EU, Theresa May's Brexit plan was rejected by the UK parliament for a third time.

In the meantime, the 12th of April is drawing closer, and it looks almost certain that there will be no deal by then.

It now becomes clear to the EU that there will probably not be a deal before the 22nd of May 2019, and a senior EU source indicated to the BBC that European Council President Donald Tusk is proposing to offer the UK a 12-month "flexible" extension to its Brexit date.

Theresa May will soon meet with opposition parties to try and reach a deal.

You will be updated next week.

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 published List 02/2019 under Notice No. 178 of 2019. Under the Notice there were applications for an increase in the general rate of customs duty on certain aluminum plates, sheets, strips and foil products classifiable under tariff heading 76.06 and 76.07, from free of duty to WTO bound rate of 15% ad valorem as well as an increase in the general rate of customs duty on crystalline silicon photovoltaic modules or panels classifiable under tariff subheading 8541.40.10, by way of creating an 8-digit tariff subheading, from free of duty to 10% ad valorem.

Notice No. 178 of 2019 was published in *Government Gazette* No. 42337 of 29 March 2019.

Contact the following persons for more information about the individual applications:

- Aluminum plates, sheets, strips and foil products classifiable under tariff heading 76.06 and 76.07:

Enquiries: ITAC Ref: 16/2018, Mr. Tshepiso Sejamoholo and Ms. Diphetogo Rathete, Tel: 012 394 1605/43683 or alternatively e-mail tsejamoholo@itac.org.za or drathete@itac.org.za.

- Crystalline silicon photovoltaic modules or panels classifiable under tariff subheading 8541.40.10:

Enquiries: ITAC Ref: 13/2018, Ms. Diphetogo Rathete and Mr. Pfarelo Phaswana, Tel: 012 394 3683/3628 or alternatively e-mail drathete@itac.org.za or pphaswana@itac.org.za.

Comments on the applications are due on 12 April 2019.

ITAC also published two documents titled "International Trade Administration Act: Economic Partnership Agreement guidelines and conditions to a bilateral safeguard application between European Union and SADC states" and "International Trade Administration Act: Guidelines, rules and conditions pertaining to caustic soda imported in terms of rebate items 306.15/2815.12/01.06 and 306.15/2815.12/02.06 for the extraction of copper and nickel" under Notices 177 and 179 in *Government Gazette* No. 42337 of 29 March 2019.

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.

This week two Notices have been published, both relating to the amendments of last week, and thus resulting from the Budget Proposals of the Minister of Finance.

All the amendments relate to the Budget Proposals of the Minister of Finance on 20 February 2019.

Under the first notice, Part 7A of Schedule No. 1 has been amended by the amendment of Note 5 to include the reference to grams per 100 millimetres and by the insertion of a new Note 6 to indicate how sugar content will be calculated. (SARS Reference 1/7/3 refers. At time of publication, the publication details were not available).

Under the second notice a correction notice has been published to amend the description of tariff subheading 8471.49.90 to change the wording from "with a screen size exceeding 45cm" to "other". The correction notice relates to Notice No. R. 500 of *Government Gazette* No. 42338 on 29 March 2019, and the effective date is thus 1 April 2019. The SARS Reference Number is 1/1/1619.

Refer to the Jacobsens Customs Watch dated 5 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.

On 21 December 2018 the Acting SARS Commissioner published a notice to withdraw the outdated Internal Administrative Appeal Rules under sections 77H and 120 of the Customs and Excise Act, 1964 (Act No. 91 Of 1964), the rules published in *Government Notice* R. 1874 of 8 December 1995, with effect from 1 April 2019.

The Notice (R. 1420) was published in *Government Gazette* No. 42128 of 21 December 2018.

A notice to amend the effective date of the Rule amendment from 1 April 2019 to 1 September 2019 was published under Notice R. 516 in *Government Gazette* No. 42356 of 29 March 2019.

The SARS reference number for the Rule amendment was 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