LexisNexis

Jacobsens: Customs News Bulletin

Latest News

EXTENSION OF THE PRICE REFERENCE SYSTEM ON THE EXPORTATION OF WASTE SCRAP METAL

The International Trade Administration Commission of South Africa (ITAC) is responsible for import control into South Africa, and export control from South Africa under section 6 of the International Trade Administration Act, No. 71 of 2002.

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 Act, 71 of 2002, (ITA Act), that ITAC exercise its powers under the ITAC Act to regulate the exportation of ferrous and non-ferrous scrap metal. ITAC established a Price Preference System (PPS) pursuant to which it would not authorise the exportation of ferrous and non-ferrous scrap metal unless it had first been offered for sale for domestic beneficiation, to the domestic consuming industry, for a period and at a price discount or other formula determined by ITAC.

The export control on ferrous products in terms of the price reference system were due to expire at the end of September 2018.

In terms of Notice No. 1007 which was published in *Government Gazette* No. 41939 of 28 September 2018, the existing (amended) Export Control Guidelines on the Exportation of Ferrous and Non-ferrous Waste and Scrap (as contained in *Government Gazette* No. 37992, Notice No. R. 714 dated 12 September 2014) have been withdrawn and extended. The implication of Notice No. 1006 is that the export control on ferrous products will remain in force in accordance with the Minister's Policy Directive, until 30 June 2019.

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 tariff amendments to the SACU Tariff that were published on 28 September 2018 were published in *Government Gazette* No. 41939 under Notices R. 1007 to R. 1011.

A notice was also published in the *Government Gazette* of 5 October 2018 to increase the rate of customs duty on sugar of the subheadings of HS 2017 heading 17.01 from 419.52c/kg to 460.86c/kg in terms of the existing variable tariff formula as recommended in ITAC Minute M10/2018.

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.

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

LexisNexis