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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NOTICE 345 OF 2020****INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA****INTRODUCTION**

In terms of section 60(1) of the International Trade Administration Act, 2002 (Act No. 71 of 2002), the International Trade Administration Commission of South Africa ("ITAC") is amending its Guidelines for Rebate Item 412.11/00.00/01.00 as discussed below and as indicated in the document that follows, entitled *Guidelines, Rules and Conditions Pertaining to Certificates Issued Under Paragraph (A) of Rebate Item 412.11/00.00/01.00 for Goods Imported for the Relief of Distress of Persons in Cases of Famine or Other National Disaster ("the Amended Guidelines")*.

1. BACKGROUND

- 1.1 On 15 March 2020, the Minister of Cooperative Governance and Traditional Affairs declared a national state of disaster in response to the Covid-19 pandemic. (See *Government Gazette* No. 43096).
- 1.2 Rebate Item 412.11/00.00/01.00, paragraph (a) ("Rebate Item 412.11(a)"), is a provision that becomes available of use in the event of a national disaster and provides for a full rebate of customs duty for imported goods.
- 1.3 Specifically, under Rebate Item 412.11(a), goods that are eligible for a full rebate of customs duty are those goods imported for "the relief of distress of persons". The provision does not contemplate the open-ended importation of goods. Instead, the provision targets goods that assist with the relief of distress of persons caused by the relevant national disaster. Additionally, what is targeted by the provision are goods for which may be insufficient domestic supply to relieve the distress of persons.
- 1.4 The requirements surrounding the granting of a full rebate of custom duty also reflect an additional policy consideration, namely that the inclusion of a wide range of imported goods would undermine the support that tariffs provide domestic industries.

- 1.5 In light of these considerations, ITAC, following consultations with the South African Revenue Service, the Department of Trade, Industry and Competition and other relevant parties, published a list of critical supplies (“the List”), which set forth goods that were eligible for the aforementioned rebate upon submission to, and approval by, ITAC of an application.
- 1.6 ITAC started issuing permits from 30 March 2020 onwards, which certificates were valid for a period ending on 31 May 2020. Given significant levels of imports of critical goods under Rebate Item 412.11(a) and increases in domestic production, the rebate certificate programme was not renewed and came to an end on 31 May 2020. (See Government Gazette No. 43361).

2. DISCUSSION

- 2.1 The Covid-19 pandemic in South Africa is ongoing. To combat the pandemic, there still may be a need to import critical goods that may be in short supply domestically.
- 2.2 It is for this reason that ITAC is considering again issuing rebate certificates under Rebate Item 412.11(a). As a result of its experience in administering the first round of rebate certificates under Rebate Item 412.11(a), ITAC has revised its current Guidelines, which it is hoped will enhance its administration of the rebate certificate programme. It is for this reason that ITAC is also publishing draft Amended Guidelines for notice and comment.
- 2.3 To assist the public in commenting on the *Amended Guidelines*, the following points should be noted. First, the *Amended Guidelines* relate solely to Rebate Item 412.11(a) and the administration of, and matters related to, the provisions set forth in paragraphs (b) and (c) of Rebate Item 412.11/00.00/01.00 remain based on the current Guidelines.
- 2.4 Second, ITAC has identified certain critical goods for which domestic production may be insufficient to meet anticipated demand and which would therefore be eligible for rebate certificates. These goods are identified in the notice (“the Notice”) referred to in paragraph 5.1 of the *Amended Guidelines*, and which Notice is also being published herewith.
- 2.5 Third, the *Amended Guidelines* contemplate a process whereby potential importers of goods must first consult with domestic manufacturers of the goods in questions to see if these manufacturers can supply them (see paragraphs 5.2-5.3). Only where it has been demonstrated through engagement with domestic manufacturers that there is insufficient domestic supply of a good, will ITAC consider issuing rebate certificates.
- 2.6 Finally, certain goods may be needed to relieve the distress of specific persons (see paragraph 5.4 of the *Amended Guidelines*). Where this is the case and to ensure that such persons receive the imported goods, ITAC may require that

applicants secure invoices/orders from such persons and submit such documents at the time of submission of an application form.

- 2.7 It is anticipated that the rebate certificate programme will be in effect from July 2020 to September 2020. However, ITAC will, on an ongoing basis, assess the need for the issuing of rebate certificates and may by notice shorten or lengthen the period that the programme is in effect.
- 2.8 Given the urgency surrounding efforts to combat the Covid-19 pandemic, comments on the *Amended Guidelines*, the application form and related documents also being published herewith, must be received by ITAC on or before **Monday, 29 June 2020**.

Please forward comments electronically to the following official, using “**Amended Guidelines for Rebate Items 412.11(a)**” in the *Subject* line of the e-mail:

Alexander Amrein

Senior Manager: Policy and Research

E-mail: aamrein@itac.org.za



GUIDELINES, RULES AND CONDITIONS PERTAINING TO CERTIFICATES ISSUED UNDER PARAGRAPH (A) OF REBATE ITEM 412.11/00.00/01.00 FOR GOODS IMPORTED FOR THE RELIEF OF DISTRESS OF PERSONS IN CASES OF FAMINE OR OTHER NATIONAL DISASTER

1. PURPOSE

- 1.1 Paragraph (a) of Rebate Item 412.11/00.00/01.00 (“**Rebate Item 412.11(a)**”) is a provision that becomes available for use in the event of a famine or other national disaster. **Rebate Item 412.11(a)** came into effect on 15 March 2020, following the Minister of Cooperative Governance and Traditional Affairs’ declaration of a national state of disaster. (See *Government Gazette* No. 43096).
- 1.2 This document amends ITAC’s current *Guidelines, Rules and Conditions Pertaining to Permits Issued Under Rebate Item 412.11/00.00/01.00 for Goods Imported for the Relief of Distress of Persons in Cases of Famine or National Disaster; Under any technical Assistance Agreement or in Terms of an Obligation Under Multilateral International Agreement*, but only to the extent of revised guidelines, rules and conditions pertaining to applications for certificates in terms of **Rebate Item 412.11(a)**, meaning applications for a rebate certificate for goods imported for the relief of distress of persons in cases of famine or other national disaster, the operative national disaster being the Covid-19 pandemic.

2. REBATE PROVISION

- 2.1 Rebate item 412.11/00.00/01.00 of Schedule No. 4, Part 2, to the Customs and Excise Act, No. 91 of 1964 (“Customs and Excise Act”) makes provision for rebate of the full duty on –

Goods imported - (a) for the relief of distress of persons in cases of famine or other national disaster; (b) under any technical assistance

agreement; or (c) in terms of an obligation under any multilateral international agreement to which the Republic is a party: Provided that- (i) the importation of any goods under this rebate item shall be subject to a certificate issued by the International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic of Botswana, Eswatini, Lesotho and Namibia; and (ii) goods imported under this rebate item shall not be sold or disposed of to any party who is not entitled to any privileges under the rebate item, or be removed to the area of Botswana, Eswatini, Lesotho or Namibia without the permission of the International Trade Administration Commission.

3. APPLICATION PROCEDURE

- 3.1 Applicants must be registered with South African Revenue Service (“SARS”) as an importer when applying to ITAC for a rebate certificate. Applicants must also acquaint themselves with the provisions of the Customs and Excise Act, the International Trade Administration Act, No.71 of 2002 (“ITA Act”) and other legislation relating to the importation of goods into the Republic of South Africa.
- 3.2 Applicants must provide ITAC with the required information as per the relevant application form (**Annexure A**). Should the space provided in the application form not be sufficient, applicants may use the format of the application form as a guide for the format in which the required information should be submitted.
- 3.3 These Guidelines must be read and understood before completing the application form. Completed original applications for certificates may be forwarded to:

[Dedicated e-mail address to be confirmed.]

PLEASE NOTE THAT THE USE OF AN INCORRECT EMAIL ADDRESS OR THE FORWARDING OF THE SAME EMAIL MULTIPLE TIMES TO THE ABOVE ADDRESS MAY DELAY THE PROCESSING OF AN APPLICATION.

- 3.4 Should an application be found to be deficient, it will not be processed further. An application will be regarded as deficient if one or more of the following is found:
- (a) The application is not submitted in the correct format;
 - (b) The application has not complied with the guidelines, rules and conditions as set out in this document;
 - (c) The requisite information is not submitted;
 - (d) The application contains conflicting or incorrect information.
- 3.5 Applicants who submit deficient applications must re-submit duly completed application forms to replace the deficient application forms, should they wish to proceed.
- 3.6 Should an applicant fail to address any deficiency within 3 working days of the date of notification thereof from ITAC, the application will be considered to be withdrawn and will not be processed.
- 3.7 Applications must be made well in advance of the anticipated clearance of the goods, as rebate certificates will not be issued retrospectively. Applicants should allow an issuance period of between 3 -7 working days from the date ITAC received a properly **documented** and **completed** application. A properly documented and complete application means an application that contains all required information and for which all supporting documents referred to in paragraph 4.4 have been provided at the time of submission of the application.
- 3.8 Certificates for **Rebate Item 412.11(a)** are valid for the period stipulated on the certificate issued and no extensions will be granted. Consequently, if the entire quantity of goods stipulated in a certificate are not cleared on or before the expiration of the certificate, the unused allocation shall be forfeited.
- 3.9 Should an application be rejected, the applicant will be informed in writing of the decision and the reasons thereof.

4 GENERAL CONDITIONS

- 4.1 Applicants must comply with the provisions of the Customs and Excise Act, the ITA Act and all other South African legislation relating to the importation of goods into the Republic of South Africa, relevant to the transaction.
- 4.2 Notwithstanding anything to the contrary herein, certificates are issued at the discretion of the ITAC and an application for a certificate does not assure approval thereof. In exercising discretion, ITAC shall have regard to the ITA Act and other applicable legislation, as well as these Guidelines and the facts relating to each application.
- 4.3 In terms of section 26 (4) of the ITA Act, the Commission may, *inter alia*, require an applicant to provide additional information in respect of the application. The conditions attached to, and the information requested below, reflect the minimum requirements which ITAC would apply to evaluate an application under this rebate provision.
- 4.4 A rebate certificate issued in terms of Rebate Item 412.11(a) shall be valid for a period of 60 (sixty) days unless the national disaster ends prior to this period, in which case a rebate certificate shall be valid only for as long as the national disaster remains in effect.
- 4.5 Applicant must submit the following supporting documents together with a completed application form:
- (a) Engagement correspondence, as specified in paragraph 5.2;
 - (b) Confirmation correspondence, as specified in paragraph 5.3;
 - (c) Invoice(s) or order(s), if applicable under the notice issued under paragraph 5.1, as specified in paragraph 5.4;
 - (d) Completed affidavit and checklist (see Annexure A);
 - (e) Written undertaking indicating that the goods are imported for relief of distress of persons in case of famine or other national disaster (see Annexure B); and
 - (f) Completed Excel spreadsheet (see Annexure C).

4.6 A request for the amendment of a rebate certificate will only be considered when the error in the certificate issued was made by ITAC.

Note: In line with the above, no amendments to certificates will be made in instances where the applicant was responsible for the submission of incorrect information. In such instances, a new application will be required. Additionally, once a certificate has been issued, ITAC will not amend the certificate to vary the quantity or value set forth therein.

4.7 Should the certificate holder misplace a certificate, the certificate holder will be required to submit an application requesting a re-issuing of the certificate. The application must clearly set out the circumstances giving rise to this situation and must show good cause or reasons why a substitute certificate should be issued. ITAC may consider issuing a replacement certificate where the above has been submitted.

4.8 ITAC may satisfy itself as to the accuracy of the information supplied to it by the applicant by conducting verifications at such time and place as it deems necessary, including verification visits at the premises of the applicant or other person that provided the information.

4.9 Regarding verifications, ITAC may inform the applicant or other person concerned of the dates of the intended visit, and where such information is provided, the verification will be conducted on those dates.

4.10 Following a verification visit, ITAC will compile a verification report indicating what information was verified and may make same available to the applicant.

5 ADDITIONAL CONDITIONS

5.1 Imported goods that are eligible for a full rebate of duty will be specified by ITAC in a separate notice published on its website (www.itac.org.za).

5.2 Where there are domestic manufacturers of a good specified in the notice under paragraph 5.1, applications must be accompanied by written evidence of engagements, such as letters or e-mails, with the domestic manufacturers. ITAC may provide in the notice referred to in paragraph 5.1 a list of domestic

manufacturers (or relevant industry association or other industry institution, in which case such bodies must be engaged) for any good set forth in the notice. The engagement correspondence must be submitted with an application form.

- 5.3 Should the domestic manufacturer(s) of the good at issue in an application not be able to supply the goods requested, the applicant must obtain written confirmation thereof from each manufacturer, or from the relevant industry association or other industry institution, stating that the good at issue cannot be supplied to the applicant. The written confirmation must be submitted with an application form.
- 5.4 Goods set forth in the notice under paragraph 5.1 may be required to relieve the distress of specific persons. Where this is the case, the notice referred to in paragraph 5.1 will specify if invoices or orders from such persons must be included with an application form.
- 5.5 ITAC may share, and applicants, by submitting applications to ITAC, consent to the sharing of import and/or other data collected during the administration of this rebate item with government authorities and regulatory bodies, including, but not limited to, the Competition Commission. Applicants are therefore advised that, in light of the benefit derived from **Rebate Item 412.11(a)**, being the full rebate of customs duty, they should not engage in excessive, unfair, unreasonable or unjust pricing of goods.

6 NON-COMPLIANCE

- 6.1 Where non-compliance is detected, appropriate action will be taken against the relevant party in terms of the ITA Act and/or the Customs and Excise Act. This action may include (without limitation) criminal charges and the withdrawal of the certificate(s) concerned.
- 6.2 Should it be found that the goods imported in terms of the rebate certificate are used for any purpose, other than that specifically described in **Rebate Item 412.11(a)** and in the certificate, applicable customs duty may be brought into account and penalties may be imposed.



International Trade Administration Commission of South Africa

Annexure A

APPLICATION FORM FOR PARAGRAPH (A) OF REBATE ITEM 412.11/00.00/01.00 FOR GOODS IMPORTED FOR THE RELIEF OF DISTRESS OF PERSONS IN CASES OF FAMINE OR NATIONAL DISASTER

PLEASE NOTE:

It is imperative to understand the content of the document entitled “GUIDELINES, RULES AND CONDITIONS PERTAINING TO REBATE ITEM 412.11/00.00/01.00 FOR GOODS IMPORTED FOR THE RELIEF OF DISTRESS OF PERSONS IN CASES OF FAMINE OR NATIONAL DISASTER”, before completing this application form.

This application must be sent to the following e-mail address: [Dedicated e-mail address to be confirmed]. The failure to observe this condition may result in a delay in the processing of an application.

If the space provided in this form is insufficient, please use the layout of this application form as a guideline for the format in which the requested information should be submitted.

1. Details of Applicant:

1.1 Name of Applicant:

.....

1.2 VAT Registration No.:

.....

1.3 Importer’s code:

.....

1.4 Physical Address:

.....
.....

1.5 Contact Details:

1.5.1 Contact Person:

.....

1.5.2 Contact Number:

1.5.3 E-mail Address:

1.5.4 Facsimile Number:

2. Details of Manufacturer (if different from paragraph 1):

2.1 Company name:

2.2 VAT Registration No.: 2.3 Importer's code:

2.3 Physical Address:

3. Furnish the following information in respect of each of the products to be imported.

Product Description	
Tariff Heading	
Customs Value (FOB) in Rands	
Quantity (kg / units) *	
Country Importing from	

* The unit of measurement to be indicated, kilograms or units, must be the same as the one indicated in the relevant tariff subheading in Schedule 1, Part 1 to the Customs and Excise Act, 1964. Using the incorrect unit of measurement may result in a delay in the processing of an application.

4. Please provide details of the nature of business of the applicant taking into consideration the imported goods to which the rebate provision or:

.....

5. Only where the applicant is a manufacturer, indicate the employment figures in relation to the end product to be manufactured:

Applicant's Total Employment	
Female	
Youth (18- 35 years)	
Total Direct Factory Workers	
Female	
Youth (18- 35 years)	

6. By submitting this application to ITAC, the applicant consents to ITAC sharing the information contained in herein, as well as in the documents submitted with the application, with government authorities and regulatory bodies, including, but not limited to, the Competition Commission.
7. Please complete the Excel spreadsheet set forth in Annexure C and submit the same electronically together with the application form. An electronic version of the spreadsheet can be found on ITAC's website (www.itac.org.za).
8. In the case of an application submitted on behalf of a Government department which does not have an importer's code, the application must contain the name, e-mail address and cell phone number of the relevant clearing agent.

SWORN AFFIDAVIT

Submit the following declaration by the CEO or duly authorized representative of the company:

I, _____ (full names) with identity number
_____, in my capacity as _____
of _____ (hereinafter referred to as the applicant)

hereby declare under oath that I am duly authorized to depose hereto and that the information furnished in this application for **Rebate Item 412.11(a)**, for goods imported for the relief of distress of persons in cases of famine or other national disaster, as well as the written undertaking, the engagement correspondence and all other representations that form part of the application, are, to the best of my knowledge, true and correct.

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT, AND THAT HE/SHE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH, AND THAT HE/SHE CONSIDERS THIS OATH TO BE BINDING ON HIS/HER CONSCIENCE. THE STATEMENT WAS SWORN TO/ AFFIRMED BEFORE ME AND THAT THE DEPONENTS SIGNATURE WAS PLACED THEREON BEFORE ME.

SIGNED and SWORN to before me at _____ this ____ Day of _____ Year _____.

COMMISSIONER OF OATHS

FULL NAMES: _____
DESIGNATION: _____
ADDRESS: _____

CHECKLIST

When submitting a **Rebate Item 412.11(a)** application form to ITAC, an applicant is required to also submit a completed checklist, as provided in Table 1 below. The purpose of the checklist is to assist with the application process by ensuring that critical information has not been omitted from the application form and that required documents (refer to paragraph 4.5 of the Application Form) are being submitted.

Table 1: Check List

Documents and information to be submitted	Mark with an X (acknowledging completion and submission)
VAT registration no. (refer to Annexure A, para. 1.2)	
Importer's Code (refer to Annexure A, para. 1.3)	
Copy of previous certificate(s) (if applicable)	
Engagement correspondence (refer to Application Form, para. 5.2)	
Confirmation correspondence (refer to Application Form, para. 5.3)	
Invoice(s) or order(s) (refer to Application Form, para. 5.4)	
Signed affidavit (refer to Annexure A)	
Written undertaking indicating that the goods are imported for relief of distress of persons in case of famine or other national disaster (refer to Annexure B)	
Excel spreadsheet (refer to Annexure C)	



NOTICE IN TERMS OF PARAGRAPH 5 OF THE GUIDELINES, RULES AND CONDITIONS PERTAINING TO CERTIFICATES ISSUED UNDER PARAGRAPH (A) OF REBATE ITEM 412.11/00.00/01.00 FOR GOODS IMPORTED FOR THE RELIEF OF DISTRESS OF PERSONS IN CASES OF FAMINE OR OTHER NATIONAL DISASTER

This Notice is provided in terms of paragraph 5 of the *Guidelines, Rules and Conditions Pertaining to Certificates Issued under Paragraph (a) of Rebate Item 412.11/00.00/01.00 for Goods Imported for the Relief of Distress of Persons in Case of Famine or Other National Disaster* (“the Amended Guidelines”).

1. ELIGIBLE GOODS

In terms of paragraph 5.1 of the *Amended Guidelines*, imported goods that are eligible for a full rebate of duty in terms of paragraph (a) of Rebate Item 412.11/00.00/01.00 (“Rebate Item 412.11(a)”), subject to the submission and approval of an application, are as follows:

1.1 Respiratory masks (FFP2 and N95)

1.1.1 Tariff classification

6307.90.10 (of non-woven textile materials)

1.1.2 Covid-19 product information

Textile face-masks, without a replaceable filter or mechanical parts, including surgical masks

1.1.3 General rate of duty

25 per cent (*ad valorem*)

1.2 Surgical rubber gloves

1.2.1 Tariff classification

1.2.1.1 4015.11.00 (articles of apparel and clothing accessories (including gloves and mitts), for all purposes, of vulcanised rubber (excluding hard rubber); gloves, mittens and mitts: surgical)

1.2.1.2 4015.19.90 (other)

1.2.2 Covid-19 product information

1.2.2.1 Surgical rubber gloves (4015.11.00)

1.2.2.2 Other rubber gloves (4015.19.90)

1.2.3 General rate of duty

1.2.3.1 4015.11.00 – 20 per cent (*ad valorem*)

1.2.3.2 4015.19.90 – 20 per cent (*ad valorem*)

2. DOMESTIC MANUFACTURER(S), INDUSTRY ASSOCIATION OR OTHER INDUSTRY INSTITUTION

In terms of paragraph 5.2 of the *Amended Guidelines*, the following persons must be engaged with to determine if the goods set forth in paragraph 1 of this Notice can be supplied domestically:

[To be determined.]

3. SPECIFIC PERSONS (CONSUMERS/END USERS)

In terms of paragraph 5.4 of the *Amended Guidelines*, the following persons must provide applicants with invoices/orders for the goods set forth in paragraph 1 of this Notice, which documents must be provided at the time of submission of an application for a rebate certificate in terms of Rebate Item 412.11(a).

[To be determined.]

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