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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NOTICE 576 OF 2021****INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA****INTRODUCTION AND BACKGROUND**

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**”) published Guidelines and other documents in terms of paragraph (a) of Rebate Item 412.11/00.00/01.00 (“**Rebate Item 412.11(a)**”). These were contained in Government Gazette No. 45003 of 16 August 2021 (“**the Notice**”).

DISCUSSION

As explained in the Notice, the *Guidelines, Rules and Conditions Pertaining to Certificates Issued under Rebate Item 412.11(a)* (“**Guidelines**”) are intended to assist with applications for the duty-free importation of goods by domestic manufacturers whose manufacture of goods has been significantly impacted by the unprecedented scope and impact of the recent civil unrest in KwaZulu-Natal and Gauteng.

Given the urgency surrounding the provision of relief, applicants were able to apply for relief upon publication of the Notice. However, ITAC also sought comments on the Rebate Item 412.11(a) initiative. Comments have been received and, where appropriate, incorporated into amended Guidelines. Specifically, the amendments addressed the use of contract manufacturing, the period for the provision of data on the volume of goods having been manufactured prior to the damage of an applicant’s manufacturing facility or facilities and the retrenchment of employees.

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 These *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 Guidelines**”) are intended to assist with applications for the duty-free importation of goods by the domestic manufacturers whose production of goods has been significantly affected by the unprecedented scope and impact of the recent civil unrests in KwaZulu-Natal and Gauteng which occurred in and around the week of 11 July 2021. The Guidelines explain the application process and set out the documents and information to be provided when applying for this rebate. Manufacturers should note that they will also need to comply with any requirements of the South African Revenue Service (“**SARS**”).
- 1.2 In accordance with its terms, Rebate Item 412.11/00.00/01.00, paragraph (a) (“Rebate Item 412.11(a)”), may be applied by ITAC in the event or circumstances of a national disaster. The extensive damage, destruction, injury and deaths that resulted from the recent civil unrest in KwaZulu-Natal and Gauteng had a widespread impact, with implications for all of South Africa.
- 1.3 The domestic manufacturing sector has been directly affected by the unrest, with serious implications for the local and national economy in terms of jobs, interruptions in manufacturing processes, the supply chain of products, and the continuity of businesses.

- 1.4 A domestic manufacturer of products (**"the applicant"**) may apply for a rebate of duty in terms of Rebate Item 412.11(a) to import goods ("goods" or "products" are used interchangeably herein) that it normally manufactures domestically where:
- (a) the applicant has been directly affected by the unrest in KwaZulu-Natal and Gauteng which occurred in or around the week of 11 July 2021, in that one or more of its manufacturing facilities were destroyed or materially damaged by persons taking part in the civil unrest;
 - (b) the manufacturing processes of the applicant were disrupted to such an extent that its domestic manufacturing output ceased or will be substantially reduced for a significant period of time resulting in an unforeseen shortfall in the volume of products that it had planned to supply from the manufacturing facility or facilities that were destroyed or materially damaged, as set out in (a) above (**"the Shortfall Products"**);
 - (c) the impact on its manufacturing processes can have or had a material adverse effect on employment in the applicant;
 - (d) the identical product/s that stand/s to be imported by the applicant is/are not available in the domestic market, in the same quantities that the applicant was able to produce periodically prior to the civil unrest, from another domestic manufacturer unaffected by the civil unrest;
 - (e) orders have been received by the applicant for, or the applicant offered for sales on the domestic market, product/s of the same model and/or type as the Shortfall Products;
 - (f) the applicant is not able to fulfil such orders from its existing stocks; and
 - (g) the applicant plans to bring its domestic manufacturing processes back to full capacity in the short to medium term or use contract manufacturer/s in the domestic market for such manufacturing processes.

2. REBATE PROVISION

- 2.1 Rebate item 412.11(a) of Schedule No. 4 to the Customs and Excise Act, 1964 (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 To obtain a rebate certificate, applicants must comply with a bifurcated process involving (i) an initial evaluation of eligibility by the dtic, (ii) followed by the submission to, and processing by, ITAC of applications forms (and supporting documents). The eligibility evaluation process is set forth in paragraph 5 (“Pre-Conditions”). This paragraph and paragraph 4 below discuss the application process and the general conditions related thereto, whereby applicants submit an application form (Annexure A) and supporting documents to ITAC.
- 3.2 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, 2002 (Act No.71 of 2002) (“ITA Act”) and other legislation relating to the importation of goods into the Republic of South Africa.

- 3.3 Applicants must provide ITAC with the information as required in these Guidelines and set out in the application form in 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.
- 3.4 The Guidelines must be read and need to be understood before completing the application form. Completed original application forms for certificates may be forwarded to ITAC at the following e-mail address:
- **itac412@itac.org.za**
- Note: the use of an incorrect email address or the forwarding of the same e-mail multiple times to the above address may delay the processing of an application.**
- 3.5 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 has not been submitted in the correct format;
 - (b) The application has not complied with the Guidelines;
 - (c) The requisite information (including supporting documents) has not been submitted;
 - (d) The application contains conflicting or incorrect information.
- 3.6 Applicants who submit deficient applications must re-submit properly documented and completed application forms to replace the deficient application forms, should they wish to proceed. A properly documented and completed application means an application that contains all required information and for which all supporting documents referred to in paragraph 4.4 below have been provided at the time of submission of the application form.
- 3.7 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 further. In this case, if applicants wish to proceed, a new application form must be submitted.

- 3.8 Applications should be made well in advance of the anticipated clearance of the goods. Applicants should allow a period of 3-7 working days from date ITAC receives a properly documented and completed application for the issuing of a certificate.
- 3.9 Should an application be rejected, the applicant will be informed in writing of the decision and the reasons therefor.

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, rebate certificates are issued at the discretion of ITAC and the submission of an application for a certificate does not assure approval thereof. In exercising discretion, ITAC shall be guided by the ITA Act and other applicable legislation, as well as the Guidelines and the facts relating to each application. Rebate certificates will be valid for a three-month period, except if a different period of time is specified by ITAC.
- 4.3 The information requested in paragraph 4.4 below reflects the minimum requirements which ITAC will use to evaluate an application under this rebate provision. In terms of section 26(4) of the ITA Act, the Commission may require an applicant to provide additional information in respect of an application.
- 4.4 An applicant must submit to ITAC the following supporting documents together with a completed application form (please note that appended to the application form is a "Checklist", the purpose of which is to assist applicants by ensuring that all supporting documents below are submitted together with an application form):
- (a) A written recommendation from the dtic that the applicant is eligible for relief as provided for in paragraph 1.4 above;
 - (b) Completed affidavit and checklist (see Annexure A) and import data (see Annexure B);

- (c) A copy of any previous certificate(s) granted to the applicant in terms of Rebate Item 412.11(a), if applicable;
- (d) A current B-BBEE compliance certificate applicable to the applicant unless exempted; and
- (e) The current SARS electronic access PIN (to allow ITAC to verify full tax compliance status).

The failure to include all required documents will render the application deficient in terms of paragraph 3.5 and applicants will have 3 days, in terms of paragraph 3.7, to correct the deficiency.

- 4.5 A request for the amendment of a rebate certificate will only be considered when an 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.

- 4.6 Should a certificate holder misplace an electronic (e-mail) certificate, the certificate holder must submit an application requesting the re-issuing of the certificate. The application must set out the circumstances giving rise to this situation and must show good cause why a substitute certificate should be issued. ITAC may consider issuing a replacement certificate where the above has been submitted.
- 4.7 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.
- 4.8 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.

- 4.9 Following a verification visit, ITAC will compile a verification report indicating what information was verified and may make same available to the applicant.
- 4.10 Certificates issued in terms of Rebate Item 412.11(a) are valid for a three-month period except if a different time period is indicated in the Certificate.
- 4.11 No extensions of the validity period referred to in paragraph 4.10 will be granted. Consequently, if the entire quantity of goods stipulated in a certificate is not cleared prior to the expiration of the certificate, the rebate for the uncleared portion of goods will be forfeited.
- 4.12 Once a certificate has been issued, the applicant must submit a monthly report to ITAC and the dtic, indicating the volume and value of goods imported under this rebate during the month and progress made in the project plan to bring its domestic manufacturing processes back to full capacity. Monthly reports must be submitted to the email address for ITAC and the dtic contained in these Guidelines by the 10th of the following month.
- 4.13 ITAC will continuously monitor the volume of eligible goods being imported under Rebate Items 412.11(a). If ITAC, with input from the dtic, determines, based on available data, that sufficient volumes of eligible goods have been imported into South Africa which, together with domestic production, is sufficient to meet current or anticipated demand for such goods in the affected provinces and the rest of South Africa, ITAC may stop issuing rebate certificates. Should ITAC decide to stop issuing certificates, it will publish a notice on its website and may also publish a notice in the *Government Gazette*. Please note that all imported goods must comply with all applicable standards and compulsory specifications.

5 PRE-CONDITIONS

- 5.1 Separate from this application form, and to ensure compliance with paragraphs 1.4 and 4.4(a) above, an applicant must, prior to its submission of an application form to ITAC, demonstrate to the satisfaction of the dtic through the provision of sufficient documentary evidence and an affidavit from its principal executive officer or managing director –

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- (a) that it is a domestic manufacturer of the products to be imported (i.e. the products at issue in its application) and has been directly affected by the unrest in KwaZulu-Natal and Gauteng, which occurred in or around the week of 11 July 2021, in that one or more of its manufacturing facilities were destroyed or materially damaged by persons taking part in the civil unrest;
 - (b) that the manufacturing processes in the applicant were disrupted to such an extent that its domestic manufacturing output ceased or will be substantially reduced for a significant period of time, resulting in an unforeseen shortfall in the volume of products that it had planned to supply from the manufacturing facility or facilities that were destroyed or materially damaged, as set out in (a) above – in this regard detailed documentary evidence must be provided of the specifications and volume of the Shortfall Products manufactured on a month-to-month basis for a reasonable representative period before the damage to the manufacturing facility or facilities and its price lists applicable to those products prior to the civil unrest;
 - (c) that the impact on the applicant's manufacturing processes can have or had a material adverse effect on employment in the applicant and how importation of the product/s normally manufactured by the applicant under this rebate will affect employment in the applicant – in this regard, the applicant needs to provide an undertaking that it has not retrenched any employees owing to the consequences of the civil unrest or, if such retrenchment has occurred or are in process, what measures it will take to restore the employment of the affected employees;
 - (d) that the identical products as the product/s that stand to be imported by the applicant is/are not available in the domestic market, in the same quantities that the applicant was able to produce periodically prior to the civil unrest, from another domestic manufacturer unaffected by the civil unrest;
 - (e) that the applicant plans to bring its domestic manufacturing processes back to full capacity in the short to medium term, or use contract manufacturer/s in the domestic market for such manufacturing processes – in this regard the applicant must provide a detailed project plan including without being limited to the projected timeline and capital expenditure to be incurred in such restoration or contract manufacturing process;

- (f) that orders have been received by the applicant for, or the applicant offered for sale on the domestic market, product/s of the same model and/or type as the Shortfall Products;
- (g) that the applicant is not able to fulfil orders from its existing stock;
- (h) that the prices that it intends to apply on the sale of the products will not be an excessive price to the detriment of its customers and consumers or predatory prices, within the definition of those terms in the Competition Act No 89 of 1998 ("**the Act**"), regardless of whether the applicant is a dominant firm in terms of the Act;
- (i) that the volume of the imported products to which the rebate applies will not exceed the average levels of production of the applicant for the Shortfall Goods or similar goods during a reasonable representative period which preceded the damage to the manufacturing facility or facilities – in this regard the applicant must provide (i) audited figures of the volume of the Shortfall Product/s (or similar goods) manufactured on a month-to-month basis during a reasonable representative period preceding the damage to its manufacturing facility or facilities, and (ii) projections of the volumes of goods the applicant foresee to import under the rebate for the period during which it will bring its manufacturing processes to full capacity or use a contract manufacturer/s in the domestic market to start such manufacturing processes, which imports may not exceed the volumes in (i) above; and
- (j) that the quantity of product/s to be imported under this rebate is necessary and proportionate to replace the Shortfall Products and does not give a competitive advantage to the applicant or cause disruptions in the market.

5.2 In addition to the requirements in paragraph 5.1 above, the applicant must provide information to the dtic on the following:

- (a) any investigation the applicant is currently subject to or finding against the applicant by the Competition Commission, the National Consumer Commission, the Serious Offences Investigating Unit, the South African Police Service, the South African Revenue Service, the Financial Intelligence Centre, ITAC or any other regulatory authority or arm of Government;
- (b) any short-term insurance or other measures that would compensate the applicant for production that would have taken place during the period of

restoration of the manufacturing processes to full capacity – in this regard the applicant must provide information on any insurance or like coverage held by the applicant to enable an assessment of the equitability of the application under this rebate provision; and

- (c) details on the extent to which the applicant will be able to produce the products or similar products to a limited or reduced extent during the period of restoration of its manufacturing processes to full capacity.

5.3 The documentary evidence and an affidavit from its principal executive officer or managing director referred to in paragraphs 5.1 and 5.2 should be forwarded to the dtic at the following e-mail address:

- **rebate@thedtic.gov.za.**

5.4 By submitting an application to ITAC, the applicant consents to ITAC sharing the information contained therein, as well as in the documents submitted with the application, with government authorities and regulatory bodies including, but not limited to, the dtic, except if the applicant expressly indicates that, and substantiates why, the information or some of the information cannot be shared.

6 NON-COMPLIANCE

6.1 If ITAC has information that –

6.1.1 the applicant has misrepresented facts or submissions in its application or the submissions to the dtic pursuant to paragraph 5.1 above;

6.1.2 the applicant is not carrying out its plan to restore its manufacturing processes to full capacity, or put in place contract manufacturer/s in the domestic market for such manufacturing processes, in accordance with the project plan presented to the dtic in terms of paragraph 5.1 (g) above and fails to provide a reasonable explanation to the dtic why the restoration or contract manufacturing cannot be carried out as set out in the project plan;

6.1.3 the applicant charges excessive prices or predatory prices in respect of the imported goods contrary to the statements set out in paragraph 5.1(j) above;

6.1.4 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;

6.1.5 more and/or different goods are imported than the Shortfall Products or the volumes contemplated in paragraph 5.1(h); and/or

6.1.6 there has been any other non-compliance with these Guidelines, the International Trade Administration Act or the Customs and Excise Act,

appropriate action will be taken against the applicant in terms of applicable legislation. This action may include (without limitation) criminal charges, the withdrawal of the certificate(s) concerned, applicable customs duty may be brought into account retroactively and prospectively, 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 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 NATIONAL DISASTER* (“the Guidelines”), before completing this application form.

This application must be sent to the following email address: itac412@itac.org.za. The failure to adhere to 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: (not 70707070)

.....

1.4 Physical Address:

.....

.....

.....

1.5 Contact Details:

1.5.1 Contact Person:

.....

1.5.2 Contact Number:

1.5.3 Email Address:

1.5.4 Facsimile Number:

2. **Furnish the current SARS electronic access PIN** (to allow ITAC to verify full tax compliance status)

3. **Furnish the following information for each of the products to be imported. Please populate an Excel spreadsheet to provide this information. A sample format is provided in Annexure B.**

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

* Note: It is imperative for the timeous processing of applications that imports be quantified in terms of the number of units being imported and the weight of the goods in kilograms.

4. **Please provide details of the nature of business of the applicant:**

5. **Based on the production figure(s) in paragraph 5, explain how much of the lost production will be met through domestically-produced goods and how much through imports of the same or similar goods.**

Production lost	Domestic production	Imports

Please note: By submitting this application to ITAC, the applicant consents to ITAC and/or the dtic sharing the information contained herein, as well as in the documents submitted to ITAC and/or the dtic in terms of this application, with each other and/or with other government authorities or regulatory bodies.

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 in terms of Rebate Item 412.11(a) for goods being imported for sale to or disposal of solely to persons entitled to privileges, as well as the Excel spreadsheet (Annexure B) 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 an application form to ITAC, an applicant is also required to submit the Checklist (Table 1) below. The supporting documents referred to in the Checklist are also set forth in paragraph 4.4 of the Guidelines.

Table 1: Check List

Documents and information to be submitted with an Application Form	Mark with an X (acknowledging completion and submission)
Recommendation from the dtic	
Signed affidavit (refer to Annexure A)	
Spreadsheet on import data (refer to Annexure B)	
Copy of previous certificate(s) (if applicable)	
B-BBEE certificate (unless exempted)	

