

**REVIEW OF
CUSTOMS TARIFFS POLICY (2)**

- (a) The Customs Tariff as a way of promoting import replacement has played a significant role in promoting the development of the industrial sector.
- (b) The role of import replacement as a growth factor in the economy has declined considerably, with the result that greater exports must play a key role in making further industrial development possible.
- (c) Industrial development will play a decisive part in the achievement of the primary national economic objectives. This sector's success will have a significant impact on matters such as economic growth, per capita income, division of income, employment, exports, imports, a sound balance of payments, the development of human resources, the optimal utilization of resources, productivity, technology and general social welfare.
- (d) The rate of industrial development will be determined primarily by the ability of the various industries to improve their international competitiveness and the ability of the community and the Government to create macro-economic conditions within which the industry can improve its competitiveness.
- (e) Improved international competitiveness implies, inter alia, the lowering of levels of customs duty. Lower levels of customs duty offer amongst other lower cost structures, less price distortion and lower consumer prices. Customs duties should be reduced in accordance with the extent to which the industry succeeds in improving its competitiveness in and in order to challenge further improvement.
- (f) Certain industries hold fairly unique positions in the South African industrial sector with regard to matters such as the extent to which the foreign competition experienced by these industries has been distorted as a result of the actions of foreign governments, the capacity of the industries to hold their own against foreign competition, the scope of employment opportunities provided, the importance of the industries to the national economy or the welfare of a particular area and the potential to adjust to lower customs duties in the short term. Exceptions to the general policy are necessitated by this situation.
- (g) Although the general trend over the long term should be towards the lowering of ordinary customs duties, ordinary

customs duties on specific products may be increased under certain circumstances. However, such an increase would have to be restricted to cases where it can be shown that the increase would in fact contribute to industrial development which will be in accordance with the national economic objectives. Customs tariff assistance to an industry should be in a harmony with the strategy for the development of the particular industry and other policy measures such as supply side measures.

- (h) In general, ordinary customs duties should not be used as an instrument in cases where action against dumping and subsidized imports is justified. These types of unfair competition must be dealt with by means of anti-dumping and countervailing duties respectively.
- i) Fiscal consideration should play no role with regard to amendments to ordinary customs duties, countervailing duties, safeguard duties and rebate provisions.
- j) The Customs Tariff must be simplified by reducing the number of separate provisions and also the diversity of rates of duty.
- k) Import control should not be used as a measure for the protection of industries, and moreover the country's obligations in terms of the Marrakech Agreement do not permit the use of this instrument as a protective measure.

5.2 **Ordinary customs duties**

- 25. Ordinary customs duties are customs duties mentioned in Part 1 of Schedule 1 of the Customs and Excise Act. This part of Schedule 1 consists of 97 chapters, each subdivided into a large number of individual customs tariff provisions. There are several thousand of these provisions.
- 26. Until 1994 ordinary customs duties were the primary instrument by which protection was given against normal competition from imported products and against disruptive competition arising in particular from dumping and subsidised imports. Ordinary customs duties are at present and will in future be used only with regard to normal competition from imported products, and action against dumping and subsidised imports should take place through anti-dumping duties and countervailing duties respectively.

27. With regard to Part 1 of Schedule 1 there are basically two elements that can be changed, namely the number of individual tariff provisions and the rates of duty.
28. For the sake of the administration of the relevant part of Schedule 1 it is essential that it be as simple as possible. Certain chapters of the South African Customs Tariff consist of a far finer subdivision than the internationally accepted classification system. This finer subdivision does not occur in all the chapters.
29. The South African subdivision can be retained and new subdivisions can be created only in cases where it-
 - a) is essential for statistical purposes;
 - b) is justifiable to have a specific rate of duty applicable to a specific product which differs from that of similar products.
30. With regard to b) of the previous paragraph it should be noted that it is of course generally true that related products manufactured in the Customs Union should not have materially different rates of duty.
31. Tariff subheadings covering products that are not manufactured in the Customs Union should be duty-free, except in the following cases:
 - a) If a suitable substitute is in fact manufactured and the relevant rate of duty is justified for the sake of protecting and fostering the industry in question; or
 - b) If the relevant rate of duty is justified for the sake of the simplification of the administration of the Customs Tariff.
32. The question as to what the rate of customs duty on a specific product should be arises when a party applies for a reduction or an increase of the duty, or when the Board on its own initiative decides to assess it or when the Minister requests the Board to do so.
33. The consideration of the rate of duty that should apply for the protection of an industry in the Customs Union should take place within the framework of the considerations mentioned in section 5.1 of this document.
34. The nominal rate of duty on the product of an industry is not in itself a good indication of the extent to which an industry is protected or fostered by the Customs Tariff, because the industry's input materials may be burdened with Customs duties.

35. The so-called effective rate of protection is a good indication of the extent to which a customs duty protects and fosters a specific industry. The effective rate of protection measures the net result of the advantage that the industry enjoys as a result of customs duties on its output and the disadvantages suffered by the industry as a result of customs duties on its inputs.
36. The above guidelines and the considerations mentioned under 5.1 provide a general framework within which the justifiability of a particular rate of duty may be considered.
37. The consideration of the justifiability of a particular rate of duty cannot however take place solely on the basis of the approach set out in the previous paragraph, since attention will have to be developed also, within the framework, to other factors that are of importance in view of the primary economic objectives of the Government. These factors include employment, investment, the utilisation of resources, the development of human resources, technology, international competitiveness, imports, exports, growth potential, effective competition, concentration of economic power, consumer prices, the ability of the industry to meet the reasonable demands of the market with regard to quantity and quality, effective competition the importance of the industry concerned with regard to the socio-economic welfare of the community of a particular region, productivity, balanced development in Southern Africa and the influence of the rate of duty in question on the said variables.

5.3 **Anti-dumping and countervailing duties**

38. The concepts “dumping” and “subsidised imports” are defined in the Marrakesh Agreement and in the Board on Tariffs and Trade Act.
39. Anti-dumping or countervailing duties are recommended with regard to imports that are regarded as “dumped” or “subsidised” in terms of the specific definitions and which cause or threaten material injury to an established industry in the Customs Union or materially retards the establishment of an industry in the Customs Union.
40. When the Board, at any time during its investigation, is satisfied that urgent action is justified in order to prevent material injury being experienced by the industry concerned during the investigation, it may request the Commissioner for Customs and Excise to charge a provisional payment in respect of the product(s) with which the investigation is concerned by notice in the

Government Gazette. Such actions should comply with South Africa's Marrakesh obligations.

41. In terms of the Marrakesh Agreement action by way of anti-dumping and countervailing duties is subject to detailed provisions that have to be complied with.

5.4 Safeguard duties

42. In terms of the Marrakesh Agreement safeguard duties may be charged on a product if such product is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
43. In terms of the Marrakesh Agreement safeguard duties may only be applied following an investigation pursuant to procedures previously established and made public. Action by way of safeguard is in terms of the Marrakesh Agreement subject to detailed provisions that have to be complied with. Up to the present safeguard duties have not been levied and the approach is that this measure can be considered only if –
 1. an industry finds itself in the situation described in paragraph 42 and therefore cannot withstand the competition from the imported product with its own resources;
 2. action in the form of ordinary customs duties, anti-dumping duties or countervailing duties is not justified;
 3. the safeguard duty makes it possible to eliminate the causes of the competitiveness of the industry, or to cease production of the product in such a way as to cause the least disruption, thereby affording the opportunity for alternative employment of resources, especially labour.

5.5 Provision for rebate of duty in Schedule 3

44. In Part 1 of Schedule 3 of the Customs and Excise Act provision is made for rebate of the duty on goods used in the manufacture of other goods, and in Part 2 of the Schedule provision is made for rebate of the duty on goods used in the manufacture of other goods exclusively for export.

45. In general rebate provisions complicate the administration of the Customs and Excise Act and therefore such provisions needs to be restricted.
46. It is policy with regard to Part 1 of the Schedule in question to recommend rebate provisions only in cases where the product concerned or a suitable substitute therefore is not manufactured in the Customs Union and where the duty payable thereon means that the relevant end-product cannot compete in terms of price against similar imported products. In cases where the tariff relief can take place by way of a reduction in duty of the product concerned without eroding the protection, a reduction of the duty is recommended in preference to a rebate provision.
47. In the case of Part 2 of Schedule 3, where provision is made for rebate of the duty on material used for the manufacture of goods for export, a policy of recommendation is followed. In general the policy is to support such requests irrespective of whether or not the product concerned is manufactured in the Customs Union, the approach being that tariff protection should not undermine the competitiveness of exports.
48. It is not the policy to recommend rebate of duty in Part 2 in cases where imports take place on an irregular basis, since in such cases it is better to recommend rebate permits in terms of the general provision in Schedule 4 (item 470.03).

5.6 Provisions for rebate of the duty in Schedule 4

49. This Schedule consists of four parts and each part contains a number of provisions. The provisions relate to products which are unreasonable burdened by duty in the specific conditions described in the rebate provisions concerned or which in terms of international conventions, should not be subject to the payment of customs duties.
50. In general, this kind of provision should be limited owing to the administrative burden it creates and since it can erode the protection and encouragement afforded by customs duties.
51. Part 1 of Schedule 4 provides for rebate of the duty on the following diverse goods:

- 1) State imports (item 401.00). It is the policy that imports by the State must be burdened to the same extent as imports by the private sector. This policy has been implemented in full and no such rebate provision exists any longer.
- 2) Imports by international organisations (item 403.00). There is at present only one such provision in terms of which the War Graves Commission and similar international organisations can import certain products with rebate of duty for their own use. It is not the policy to create additional provisions.
- 3) Goods for use by hospitals or by educational, scientific and similar institutions (item 404.00). No such provision for rebate of the duty exists any longer and it is not policy to recommend such provision.
- 4) Goods for cultural, educational, charitable, welfare or youth organisations or purposes (item 405.00). Different provisions exist under this item and some of the provisions should, in the light of paragraphs 50 and 51, be investigated in order to determine whether they are still justifiable.
- 5) Goods for heads of state and for diplomatic and other foreign representatives (item 406.00). It is not policy to change these provisions materially.
- 6) Goods imported by immigrants, tourists, returning residents and passengers for their personal use (item 407.00). It is not policy to change these provisions materially.
- 7) Other personal rebates (item 408.00). Under this item provision is made, amongst other, for rebate of the duty on medals and such like items earned by participation in competitions or through extraordinary achievement as well as for rebate of duty on certain vehicles and furniture used by physically disabled persons. It is not policy to change these provisions materially.
- 8) Re-imported goods (item 409.00). It is not policy to change these provisions materially.
- 9) Goods for industrial or commercial purposes (item 410.00). The existing provision should in the light of paragraphs 50 and 51 be investigated with a view of the withdrawal thereof.

- 10) Miscellaneous rebates (item 411.00) and general rebates (item 412.00). Under these items, provision is made for rebate of the duty on various products which can be used for various purposes. The existence of some of the provisions should be reconsidered in the light of paragraphs 49 and 50.
52. Part 2 of Schedule 4 makes provision for the temporary rebate of customs duties and contains a great number of rebate provisions,
53. Part 3 of Schedule 4 provides for “goods temporarily permitted with rebate of the customs duties”. The existing policy does not require changes to this section. Item 470.03 of this part provides for rebate of the full duty on goods cleared in terms of a permit issued by the Director-General: Trade and Industry on recommendation of the Board on Tariffs and Trade, for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export. This provisions plays a critical role in the promotion of exports.
54. Part 4 provides for fuel levy rebates and is not the result of a recommendation by the Board.

5.7 Drawback and refund provisions

55. Schedule 5 of the Customs and Excise Act makes provision for the drawback and refund of duties and consists of four parts.
56. Part 1 contains a large number of provisions for drawback of the duty on a variety of products that are used for the manufacture of goods for export. This part also contains a general provision in terms of which the Director-General of Trade and Industry on the recommendation of the Board on Tariffs and Trade can issue permits for drawback of packaging of goods for export. Permits are readily recommended in order to prevent customs duties from having an adverse effect on the competitiveness of export. As soon as exports take place on a regular basis a specific drawback provision is recommended by the Board on Tariffs and Trade.
57. Part 2 makes provision for the refund of duties on goods exported in the same condition as imported. It is not policy to change this part materially.
58. Part 3 contains a provision for refund of duties for various purposes. Some of the provisions are concerned with distillate fuels and are not the result of recommendations by the Board. In

respect of the other provisions it is not policy to recommend material changes.

59. Part 4 provides for the refund of fuel levies and this is not the result of recommendations by the Board.