

Mr Ebrahim Patel, MP
Minister of Trade and Industry
Private Bag X84
Pretoria
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Dear Minister

MINUTE M 04/2019: AMENDMENT TO THE ANTI-DUMPING DUTIES ON CHIPS OR FRENCH FRIES ORIGINATING IN OR IMPORTED FROM BELGIUM

On 08 August 2014 a notice detailing the Commission's recommendation to the Minister of Trade and Industry to impose definitive anti-dumping duties on frozen potato chips or French fries originating in or imported from Belgium was published in the *Government Gazette*. The notice indicated that the Minister of Trade and Industry had decided to suspend the imposition of the anti-dumping duties until the termination of the safeguard duty on frozen potato chips. The anti-dumping duties therefore came into effect on 21 October 2016.

The current anti-dumping duties on frozen potato chips or French fries originating in and imported from Belgium and the Netherlands are as follows:

Item	Tariff Heading	Code	C D	Description	Rebate Items	Imported from or originating in	Rate of duty
204.05	2004.10.2	01.07	72	Chips or French fries produced by Clarebout Potatoes N.V	301.00-399.00; 401.00-499.00	Belgium	6.18%
204.05	2004.10.2	02.07	77	Chips or French fries produced by Mydlbel Foods SA	301.00-399.00; 401.00-499.00	Belgium	9.71%
204.05	2004.10.2	03.07	71	Chips or French fries produced by PinguinLutosa Foods B.V	301.00-399.00; 401.00-499.00	Belgium	5.81%

204.05	2004.01.2	04.07	76	Chips or French fries (excluding those produced by Agristo N.V Harelbeke, Clarebou Potatoes N.V, Mydibel Foods SA and PinguinLutosa Foods B.V)	301.00-399.00; 401.00-499.00	Belgium	30.77%
204.05	2004.10.2	05.07	70	Chips or French fries produced by N.V Tilburg	301.00-399.00; 401.00-499.00	Netherlands	12.52%
204.05	2004.10.2	06.07	75	Chips or French fries (excluding those produced by Agristo N.V Tilburg and Lamb Weston/Meljer V.O.F	301.00-399.00; 401.00-499.00	Netherlands	16.42%

On 20 March 2019, a request was received from Lutosa, requesting that the name "PinguinLutosa Foods B.V" be amended to "Lutosa" for purposes of collection of the duties.

As reasons for its request the Applicant stated the following:

- At the time that the notice was published, Lutosa was known as PinguinLutosa Foods B.V (the name that appears on the tariff schedule).
- The potato processing division of PinguinLutosa was sold to McCain Foods to form Lutosa, a subsidiary of McCain.
- The name change from PinguinLutosa foods to Lutosa was finalized on the 7th of July 2013, before the imposition of the anti-dumping duty on the 8th of August 2014.
- SARS is of the view that Lutosa is a different legal entity to PinguinLutosa Foods B.V and as such is liable for an anti-dumping duty of 30.77% which was the residual dumping duty imposed on companies who did not receive an individual dumping duty.
- The exporters' name change was merely that, as the legal identity is identical, all the way down to the registration number and as such the duty to be collected should be the duty calculated for PinguinLutosa. The dumping duty of 5.81% still applies to Lutosa.
- Unless the tariff schedule is amended, SARS will continue to demand an anti-dumping duty of 30.77% from the Applicant.
- The official documentation substantiating the amendment of the exporters name from "PinguinLutosa Foods B.V" to "Lutosa" was provided.

Lutosa requested that the name change be done retrospectively with effect from 8 August 2014.

SARS was requested to indicate whether the amendment could be done retrospectively. SARS stated that in terms of Section 56(2)(b) of the Customs and Excise Act, 1964 the amendment of the exporters name cannot be implemented retrospectively, but can be done from the date that such name amendment notice is published in the *Government Gazette*.

The Commission therefore decided to recommend to the Minister of Trade and Industry that that the name change from "PinguinLutosa Foods B.V." to "Lutosa" be affected in Schedule 2 of the Customs and Excise Act, from date of publication.



Meluleki Nzimande
Chief Commissioner

Date: 24/06/2019

SOUTH AFRICAN REVENUE SERVICE

NO. R. 1261

27 SEPTEMBER 2019

**CUSTOMS AND EXCISE ACT, 1964.
AMENDMENT OF SCHEDULE NO. 2 (NO. 2/1/396)**

In terms of section 66 of the Customs and Excise Act, 1964, Part 1 of Schedule No. 2 to the said Act is hereby amended to the extent set out in the Schedule hereto.



DAVID MAKHOSINI
DEPUTY MINISTER OF FINANCE

SCHEDULE

By the substitution of the following:

Item	Tariff Heading	Code	CD	Description	Rebate items	Imported from or Originating in	Rate of Anti-dumping duty
204.05	2004.10.2	03.07	71	Chips or French fries produced by Luibsa	301.00 – 399.00 401.00 – 499.00	Belgium	5,81%
204.05	2004.10.2	04.07	76	Chips or French fries (excluding fries produced by Agriato N.V Harelbeke, Clarebout Potatoes N.V., Mydibel Foods S.A and Luibsa)	301.00 – 399.00 401.00 – 499.00	Belgium	30,77%