

**Mr Ebrahim Patel**  
**Minister of Trade, Industry and Competition**  
Private Bag X 84  
**PRETORIA**  
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Dear Minister Patel

**MINUTE NO. M11/2021: THE AMENDMENT OF NOTE 1.2 TO REBATE ITEM 317.03 OF THE CUSTOMS AND EXCISE ACT,1964 FOR THE IMPLEMENTATION OF THE AUTOMOTIVE PRODUCTION DEVELOPMENT PROGRAMME**

1. The Commission considered a request from South African Revenue Service (“SARS”) to consider an amendment to Note 1.2 to Rebate Item 317.03 of Schedule 3 of the Customs and Excise Act,91 of 1964 (“Customs and Excise Act”) in order to align Automotive Production Development Programme (“APDP”) legislative framework in respect of the calculation of the Volume Assembly Allowance (“VAA”) and to give effect to the policy intention.
2. As motivation for the request, SARS furnished the following reasons:
  - There appears to be a misalignment between the Notes to Rebate Item 317.03 and ITAC’s APDP Regulations and Information Documents;
  - Note 1.2 to Rebate Item 317.03 prescribes that the VAA should be calculated according to the number of units produced within a specific quarter, resulting in a lower percentage being claimed for VAA purposes;
  - ITAC’s Information Document B/2014 (“Info Doc B/2014”) states that the VAA is to be calculated based on a rolling four quarters production volumes. This effectively means that the VAA percentage would be determined based on the volumes produced over the most recent four quarters instead of the actual quarter for which the APDP account was submitted; and

- A legislative amendment to Note 1.2 to Rebate Item 317.03 of the Customs and Excise Act is necessary to give effect to the intent of the APDP policy objective.

3. Note 1.2 to Rebate Item 317.03 in the Customs and Excise Act contains definitions and also provides for a sliding scale of percentages to be used in the calculation of the VAA for the APDP customs account purposes in line with ITAC’s Info Doc B/2014. In addition, Rebate Item 317.03 prescribes how the VAA should be calculated. The Table below sets out the current wording of Note 1.2 to Rebate Item 317.03 (See column on the left marked Table 1a) and the proposed amendment (See column on the right marked Table 1b).

| Table 1a: Current Note 1.2 to Rebate Item 317.03 to the Customs and Excise Act, 1964  | Table 1b: Proposed Amendments Note 1.2 to Rebate Item 317.03 to the Customs and Excise Act, 1964  |
|---|---|
| Value for VAA purposes” means the value, determined on the basis prescribed in Note 7.1*, of all specified motor vehicles produced in terms of this item <b><u>during a quarter and ready for sale</u></b> ”. | Value for VAA purposes” means the value, determined on the basis prescribed in Note 7.1, of all specified motor vehicles produced in terms of this item, <b><u>during most recent four quarters total and ready for sale</u></b> ”. |

\*Note 7.1 specify that the value for VAA purpose for any quarter shall be the recommended retail list price exclusive of VAT, excise duty and environmental levy less a CSP on a quarterly basis for specified motor vehicles manufactured for the SACU market or the price free on board less a CSP on a quarterly basis for specified motor vehicles exported outside the SACU.

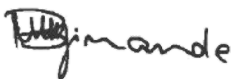
4. As shown in the Table above, the current Note 1.2 to Rebate Item 317.03 is patently inconsistent with the policy intent which requires consideration of the most recent four quarters (i.e. the trailing Four Quarter Period) in determining “value” for VAA purposes. Currently, Note 1.2 of Rebate Item 317.03 incorrectly provides for the determination of the applicable VAA percentage based on single quarter production volumes and not on the most recent four quarters.
5. The proposed amendment to Note 1.2 to Rebate Item 317.03 to the Customs and Excise Act will not have implications for the fiscus as it will not result in any refunds/payments made to OEMs. The proposed amendment will however, provide administrative certainty with respect to the administration of the APDP.
6. It is not the policy intent to use a single quarter production volume for the purpose of VAA calculation and that the relevant legislation needs to be amended to reflect the intent of the programme, which is the use of the most recent four quarters for the purpose of the VAA calculation. The proposed amendment as shown in the table above will provide

clarity with respect to interpretation and calculation of the VAA. This will in turn provide certainty and stability in the administration of the APDP going forward.

7. Comments in support of the amendment to Note 1.2 of Rebate Item 317.03 were received from the National Association of Automobile Manufacturers of South Africa (“NAAMSA”). NAAMSA noted that the use of a rolling most recent four quarter period (ie the Trailing Four Quarter Period) takes account of the fact that not all production would be aligned to a calendar year. It also expressed its agreement with the interpretation as reflected in the Info Doc B/2014 which considers the most recent four quarters (ie the Trailing Four Quarter Period) when determining the applicable VAA percentage.
8. In light of the above, the Commission recommended that the amendment of Note 1.2 to Rebate Item 317.03 of the Customs and Excise Act as follows:

“Value for VAA purposes” means the value, determined on the basis prescribed in Note 7.1, of all specified motor vehicles produced in terms of this item, **during most recent four quarters total and ready for sale**”.

Yours sincerely,



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**Meluleki Nzimande**  
**Chief Commissioner**

Date: 23/12/2021