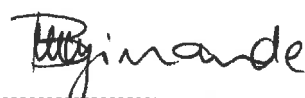


REPORT NO. 646

**CREATION OF A REBATE FACILITY FOR THE IMPORTATION OF
WEAPONS, WEAPONRY SYSTEMS, AMMUNITION AND RELATED ITEMS
USED FOR TESTING PURPOSES**

The International Trade Administration Commission herewith presents its Report No. 646: **CREATION OF A REBATE FACILITY FOR THE IMPORTATION OF WEAPONS, WEAPONRY SYSTEMS, AMMUNITION AND RELATED ITEMS USED FOR TESTING PURPOSES**, with recommendations.



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MELULEKI NZIMANDE
CHIEF COMMISSIONER

PRETORIA

03/02/2021
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REPUBLIC OF SOUTH AFRICA

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 646

CREATION OF A REBATE FACILITY FOR THE IMPORTATION OF WEAPONS, WEAPONRY SYSTEMS, AMMUNITION AND RELATED ITEMS USED FOR TESTING PURPOSES

Synopsis

Denel SOC Limited trading as Denel Overberg Test Range (OTR) (“Denel”) applied for the creation of a rebate facility for the importation of weapons, weaponry systems, ammunition and related items used for testing purposes, classifiable in Chapter 93 of the Customs and Excise Act.

The subject products are referred to as, weapons and weaponry systems imported by the applicant on behalf of its clients for the purposes of testing.

The International Trade Administration Commission of South Africa (“ITAC” or “Commission”) considered the application in the light of the information at its disposal. The Commission found that the subject products are imported solely for testing purposes and not for sale into the SACU market. As such, the applicable customs duty has an unnecessary cost-raising impact on domestic industry servicing the international clients.

The duty relief of the subject products should contribute to export promotion of local services and expertise; improve the international competitiveness of the domestic industry; sustain and create additional employment opportunities.

The subject products are subject to an import permit issued by ITAC. In addition, the rebate provision will be made subject to a permit issued by the National Conventional Arms Control

Committee and the Directorate for Conventional Arms Control in terms of the National Conventional Arms Control Act, 41 of 2002.

In light of the foregoing, the Commission recommended the creation of a rebate facility for the importation of weapons and weaponry systems, ammunition and related items for testing purposes, as outlined in paragraph 20 of this report.

THE APPLICATION AND TARIFF POSITION

1. Denel SOC Limited trading as Denel Overberg Test Range (OTR) (“Denel”) applied for the creation of a rebate facility for the importation of weapons, weaponry systems, ammunition and related items used for testing purposes.

2. The subject products are referred to as, weapons and weaponry systems imported by the applicant on behalf of its clients for the purposes of testing. Table 1 below summarises the subject products.

Table 1: The subject products

Category	Description
Missiles	Air to Ground missiles, Ground to Air Missiles, Ground to Ground Missiles, Ground to ground rockets, Surface to Surface missiles
Smart and Normal range Bombs (MK81,82,83, & 84)	Smart bombs tested and Air to Ground Scenarios
Support Ammunition	Demolition of explosives used to destroy the missile or bomb debris after the test or when a missile or bomb malfunctioned and cannot be used again

Source: Denel, 2020

3. Upon importation the subject products are generally still in development (different test phases to prove different concepts) or already produced and evaluated as an accepted system in the client’s capability when these tests are conducted.

4. The applicant is the sole domestic company that specialises in performance evaluation and verification services on in-flight systems. It provides support for the qualification of airborne systems, as well as validating the operational effectiveness of military systems for the RSA’s military and industrial users, international defence forces and industries. As such, Denel’s primary focus is on accurate testing and measurement of the in-flight performance of sophisticated weapons and weaponry systems (like stand-off missiles, air defence missiles, anti-tank tests, guided bombs, Unmanned Aerial

Vehicles (UAVs), etc.) and not so much on the destructive capabilities of the weapon systems.

5. Main activities include in-flight testing of sophisticated missile, rocket, bomb and guided munitions systems; evaluation and measurement of aircraft performance, avionic system evaluation, carriage and release clearance of ordnance and their payloads; measurement of trajectories of all types of bombs, as well as guided and unguided munitions; execution of anti-tank tests, including firings from a helicopter, electronic warfare tests; and mobile test range support services in remote locations.
6. As motivation for the application, the applicant cited amongst others the following reasons:
 - Denel has been conducting business since the mid 1980s as a testing facility. Historically, the applicant imported weapons, weaponry systems, ammunition and other related items to be tested for its international clients under Rebate Item 412.01, in accordance to the required NCACC and ITAC permits obtained;
 - Furthermore, the applicant has also utilised Rebate Item 412.11 successfully in certain instances. However, in certain instances there have been disputes on whether goods imported by Denel for testing are eligible under Rebate Items 412.01 and 412.11;
 - Due to the unique nature of Denel's business, no adequate provision has been made to address this specific situation and the wording in the current rebate items can be interpreted in an ambiguous manner;
 - Customs duties payable upon importation of weapons, weaponry systems, ammunition and related items would negatively affect the competitive position and threaten the sustainability of Denel's business; and
 - The duty relief will contribute to the reduction of cost and improve the competitive position of the domestic industry testing facility.
7. In terms of tariff classification, the subject products are classifiable under Chapter 93 of the Custom and Excise Act and attract customs duties ranging between free and

15% *ad valorem*.

8. The interpretation issues encountered by the applicant when importing the subject goods under rebate items 412.01 and 412.11 resulted in customs duties being payable on the subject goods in certain instances.
9. In light of the above, the applicant has submitted this application for the creation of a rebate facility rebate that will cater for its specific business situation in order to create certainty in the future. For administrative purpose, the South African Revenue Service (“SARS”) provided the description for the requested rebate facility:

Goods for experimental purposes:

“Arms and ammunition, parts and accessories thereof, classifiable in Chapter 93, for the purposes of testing and experimenting therewith as the National Conventional Arms Control Committee and the Directorate for Conventional Arms Control may allow by specific permit in terms of the National Conventional Arms Control Act, 41 of 2002”.

Provided that:

(i) Goods imported under this rebate item shall be limited to goods imported for testing purposes and shall not be sold or disposed to any other party or be removed to the area of Botswana, Eswatini, Lesotho or Namibia unless under specific authority of the National Conventional Arms Control Committee and the Directorate for Conventional Arms Control; and

(ii) Goods not consumed or destroyed during the testing process must be exported within 180 days from the date of the said import permits issued by the National Conventional Arms Control Committee and the Directorate for Conventional Arms Control.”

10. The application was published in the Government Gazette No. 43734 on 25 September 2020 under Notice 517 of 2020 for four (4) weeks for interested parties to comment.

INDUSTRY AND MARKET

11. Denel Overberg Test Range is the only facility of its kind in Africa. Its clients include the South African Department of Defence, the local defence industry, numerous international ministries of defence, as well as international private entities mainly in the defence industry.
12. Other known manufacturers of the weapons, weaponry systems, ammunition and

related items in the SACU region include, amongst others: Hi-Tech Arms and Ammo CC; Hot Power Weapons CC; Kalahari Arms CC; Rheinmetall Denel Munition (Pty) Ltd; and Rippel Effect Systems (Pty) Ltd

13. According to Industrial Policy Action Plan (IPAP) (2018/19 - 2020/21), the South African Aerospace and Defence industry is a globally competitive industry which supports national interests and is striving to be a preferred choice for aerospace and defence-related solutions on the African continent. The industry has helped to expand the national science, engineering and technology base and has supported the technical and technological skills base. In addition, it has entered the global market through its exports and global partnerships.

14. IPAP further highlights that the industry continues to increase its market share in Africa, Asia and Europe in products such as land systems, weapons and ammunitions, fire control and related warning equipment and other electronic equipment, including rangefinders and communication equipment.

COMPETITIVE POSITION

15. The creation of a rebate facility will contribute to the reduction of importation cost on the subject products and improve the competitive position of the domestic industry's testing facility.

COMMENTS RECEIVED

16. Comments in support of the application were received from the the dtic, Aerospace and Defence sector desk citing that the rebate provision, if supported, would allow Denel OTR to be competitive in terms of price, since they offer most of the testing services to foreign customers. Furthermore, the dtic noted that in the absence of the rebate, Denel OTR would pass the additional cost to the customers, leading to less economic activity at the testing range.

FINDINGS

17. The Commission found that the subject products are imported solely for testing purposes and not for sale into the SACU market. As such, the applicable customs duty has an unnecessary cost-raising impact on domestic industry servicing the international clients.
18. The creation of a rebate facility will contribute to export promotion of local services and expertise; improve the international competitiveness of the domestic industry; sustain and create additional employment opportunities.
19. The subject products are subject to an import permit issued by ITAC. In addition, the rebate provision will be made subject to a permit issued by the National Conventional Arms Control Committee and the Directorate for Conventional Arms Control in terms of the National Conventional Arms Control Act, 41 of 2002.

RECOMMENDATION

20. In light of the foregoing, The Commission recommends the creation of a rebate facility for the importation of weapons and weaponry systems, ammunition and related items for testing purposes, as follows:

Goods for experimental purposes:

"Arms and ammunition, parts and accessories thereof, classifiable in Chapter 93, for the purposes of testing and experimenting therewith as the National Conventional Arms Control Committee and the Directorate for Conventional Arms Control may allow by specific permit in terms of the National Conventional Arms Control Act, 41 of 2002".

Provided that:

(i) Goods imported under this rebate item shall be limited to goods imported for testing purposes and shall not be sold or disposed to any other party or be removed to the area of Botswana, Eswatini, Lesotho or Namibia unless under specific authority of the National Conventional Arms Control Committee and the Directorate for Conventional Arms Control; and

(ii) Goods not consumed or destroyed during the testing process must be exported within 180 days from the date of the said import permits issued by the National Conventional Arms Control Committee and the Directorate for Conventional Arms Control."