sait South African Institute of Taxation

# INDIRECT TAX
# CUSTOMS & EXCISE

MONTHLY NEWSLETTER

**ISSUE 2**: February 2024

## PART A: AfCFTA - WHAT'S NEW?

### AFRICA CONTINENTAL FREE TRADE AREA (AfCFTA)

### News on AfCFTA

#### February 2024 Activities

#### South Africa launched the start of its preferential trade under the AfCFTA on 31 January 2024

As per the AfCFTA website, twelve (12) countries, including South Africa, have fulfilled their legal requirements to start trading in a wide range of products.

These products include, food, drinks, steel, pharmaceuticals, personal care items, chemicals, and household goods like refrigerators and televisions.

The first shipment of goods was sent from Durban on 31 of January this year to the markets covered by the AfCFTA trade agreement.

The AfCFTA agreement is a significant trade agreement that aims to bring together all fifty-five (55) member states of the African Union. Its goal is to remove trade barriers in Africa and promote trade within the continent, especially in industries that add value and across all service sectors.

This development will give South African exporters new opportunities to access important markets in Africa.

Reference: Online: https://au-afcfta.org/2024/01/south-africa-to-launch-the-start-of-its-preferential-trade-under-the-african-continental-free-trade-agreement-afcfta-on-wednesday-31-january-2024-in-durban/; Date: 16 February 2023

### SAIT Customs Comment

When a trade agreement is successfully implemented and countries have fulfilled their legal requirements to start trading, several benefits arise.

These benefits may include the following:

- It promotes economic growth by expanding market access for goods and services, leading to increased trade volumes and business opportunities.
- It also fosters competition and innovation as companies can tap into new markets and compete on a level playing field.
- It encourages foreign direct investment, as investors are more likely to enter countries with favorable trade conditions.

To fully benefit from the trade agreement, it is important to keep up to date with developments, especially regarding the expansion of goods that may be added by countries who are members of the trade agreement.

Monitoring and evaluating the agreement's impact on various sectors and addressing any challenges that arise is crucial for maximising the benefits and ensuring sustained economic development.

# PART B: BORDER MANAGEMENT AUTHORITY (BMA) NEWS

## News on BMA

### December Activities

During the 2023 December festive period, the BMA arrested more than 240 criminals at the country's seventy-two ports of entry.

They also seized four boats that were used for smuggling undocumented migrants and illicit goods like crystal meth.

The Commissioner, Mr Mike Masiapato, highlighted the significant increase in travellers, with over a million more people crossing the border compared to 2022. Mr Masiapato emphasised that the BMA has made progress in reducing border crimes.

Reference: Online: https://news365.co.za/sa-entry-ports/; Date: 5 February 2024

### SAIT Customs Comment

Having read about the BMA's interventions over the festive period, it is important to realise that effective border management is crucial in preventing illegal migration, human trafficking, and drug smuggling, while facilitating the smooth movement of people and goods across borders.

It involves robust control measures, intelligence sharing, and coordinated operations to detect and deter illegal activities. Simultaneously, streamlined processes, harmonised regulations, and modern infrastructure help reduce congestion and delays, facilitating legitimate trade and tourism.

A well-managed border system ensures security, protects human rights, and promotes socio-economic development.

# PART C – SARS CUSTOMS NEWS

## Tariff Amendments

### February 2024

### Anti-Dumping Duty

Amendment to Part 1 of Schedule No. 2 of the Customs and Excise Act, 1964 (the Customs Act):

| Date | Theme | Description | Implementation Date |
|---|---|---|---|
| 2 February 2024 | GG and Notice Numbers<br>GG 50065<br>R.4303 | The amendment refers to the **insertion** of the exporter name 'Cooper (Kunshan) Tire Co. Ltd,' with retrospective effect from 28 July 2023, under the list of companies that qualify to receive a weighted average **anti-dumping duty** of 14.56%.<br><br>As well as the **corrections** to the names of Double Coin Group (Jiang Su) Tyre Co. Ltd and Qingdao Fullrun Tyre Tech Corp Ltd, with effect from the publication date of this notice.<br><br>As well as **excluding the following companies** from the list of companies qualify for the weighted average Anti-dumping duty of 14,56% as their responses were submitted after the deadline date and should therefore be subjected to the residual **anti-dumping duty** of 41,47%: Qingzhou Detail International Trading Co. Ltd., Shandong Gallop Rubber Co. Ltd., Wuchan Zhongda Chemical Group Co. Ltd., Navigator Rubber Co. Ltd., and Guangrao Taihua International Trade Co. Ltd., with effect from date of publication of this Notice, on the investigation on new pneumatic tyres of rubber of a kind used on motor cars and on buses or lorries originating in or imported from the Peoples Republic of China in report 714 as implemented in *Government Gazette* 49047, Notice No. R3735 dated 28 July 2023 – ITAC Minute M08/2023 | 2 February 2024, except for the insertion of the exporter name 'Cooper (Kunshan) Tire Co. Ltd.', which would be with retrospective effect from 28 July 2023. |

Reference: Online: Tariff Amendments 2024 | South African Revenue Service (sars.gov.za); Date: 8 February 2024

### SAIT Customs Comment

Anti-dumping duty is a measure to protect domestic industries from unfair competition caused by cheap imports. To effectively manage imports subject to anti-dumping duty, here are some best practices:

1. Investigate claims of dumping.
2. Impose appropriate duties.
3. Monitor compliance.
4. Support domestic industries.
5. Promote fair trade practices.

By implementing these measures, countries can effectively manage imports subject to anti-dumping duty, protect their domestic industries, and promote fair and balanced trade.

## Correction Notice

Below is a correction note related to the Customs Act:

| Date | Theme | Description | Implementation Date |
|---|---|---|---|
| 31 January 2024 | *GG* and Notice Numbers<br>*GG* 50053<br>R.4294 | Correction Notices to effect corrections to<br>• Part 1 of Schedule No. 1 of the Customs Act, by the deletion of tariff subheadings 1212.99.11, 1212.99.13, 1212.99.19, 1212.99.90, 7210.61.10, 7210.70.10, 7219.11.90, 7219.12.90, 7219.13.90, 7219.14.90, 7219.21.90, 7219.22.90, 7219.23.90, 7219.24.90, 7219.31.90, 7219.32.90, 7219.33.90, 7219.34.90, 7219.35.90, 7219.90.90, 7220.12.90, 7220.20.90, 7220.90.90 ,7314.39, 9401.91.20, 9401.99.20, 9403.20 and 9403.70, where it appears under substitutions in Notice No. R.4281 of *Government Gazette* No. 50045 on 26 January 2024<br>• Schedule No. 1, by the substitution of the date '** November 2023' with '31 January 2024' in the General Note O.5.(b) where it appears in Notice No. R.4287 of Government Gazette No. 50045 on 26 January 2024; and<br>• Part 1 of Schedule No. 1, by the substitution of the rate of duty under tariff subheading 8207.19.10 from '9' to '9%' where it appears under substitutions in Notice No. R.4281 of *Government Gazette* No. 50045 on 26 January 2024. | 31 January 2024 |

Reference: Online: https://www.sars.gov.za/legal-counsel/secondary-legislation/tariff-amendments/tariff-amendments-2024/; Date: 1 February 2024

## Correction Notice

Below is a correction note related to the Customs Act:

| Date | Theme | Description | Implementation Date |
|---|---|---|---|
| 31 Janaury 2024 | *GG* and Notice Numbers *GG* 50053 R.4293 | Correction Notice in Part 1 of Schedule No. 3 of the Customs Act, by the substitution of the preamble where it appears in Notice No. R.4285 of *Government Gazette* No. 50045 on 26 January 2024 to replace the wording 'with effect from 26 January 2024 up to and including 25 January 2026" with "with effect from 25 January 2026'. | 31 January 2024 |

Reference: Online: https://www.sars.gov.za/legal-counsel/secondary-legislation/tariff-amendments/tariff-amendments-2024/; Date: 1 February 2024

### SAIT Customs Comment

On 8 February 2024, we reached out to Ms Laetitia Culbert to get clarity on the correction note.

In response, it was clarified that the purpose of the amendment is to give notice that with effect from 26 January 2026 the rebate item will no longer exist.

The amendment should be read with the recommendations contained in ITAC Report 694 that states that the Commission recommended the said rebate item should be maintained and phased out over a period of 2 years. The 2-year phasing out period should be calculated from the date the amendment appears in the *Government Gazette*.

## Trade Agreement Updates

Below is an update on the AfCFTA:

| Date | Theme | Description | Implementation Date |
|---|---|---|---|
| 26 Janaury 2024 | *GG* and Notice Numbers *GG 50045 R.4281* | Amendment to Part 1 of Schedule No. 1 of the Customs Act, by the substitution of various tariff subheadings to implement changes to the rates of customs duties in terms of the African Continental Free Trade Area (AfCFTA) Agreement. | With effect 31 January 2024 |
| 26 January 2024 | *GG* and Notice Numbers *GG* 50045 R.4286 | Amendment to Schedule No. 1 of the Customs Act, by the insertion of Notes in Part F in the General Notes and substitution of Appendix IV to Annex 2 on Rules of Origin in Part F, to implement the African Continental Free Trade Area (AfCFTA) Agreement. | With effect 31 January 2024 |
| 26 January 2024 | *GG* and Notice Numbers *GG* 50045 R.4287 | Amendment to Schedule No. 1 of the Customs Act, by the substitution of General Note O, to implement the African Continental Free Trade Area (AfCFTA) Agreement. | With effect 31 January 2024 |

Reference: Online: https://www.sars.gov.za/legal-counsel/secondary-legislation/tariff-amendments/tariff-amendments-2024/; Date: 1 February 2024

### SAIT Customs Comment

The amendments to the AfCFTA agreement are important for South African traders who want to take advantage of the AfCFTA.

These amendments specifically focus on the customs rules of origin. For example, they address the requirements for working and processing non-originating materials to obtain originating status for the final product.

By using reverse engineering, traders can consult the AfCFTA trade protocol to determine if a specific product listed under a HS Chapter, heading, or subheading is eligible for the benefits provided by these rules.

## Heated Tobacco Products

Below is an amendment to the Customs Act:

| Date | Theme | Description | Implementation Date |
|---|---|---|---|
| 26 Janaury 2024 | *GG* and Notice Numbers *GG* 50045 R.4283 | Amendment to Part 2A of Schedule No. 1 of the Customs Act, by the substitution of tariff items 104.37.19 and 104.37.21 in order to increase the rates of excise duty for heated tobacco products, to give effect to the Budget proposals announced by the Minister of Finance on 22 February 2023. | With effect 31 January 2024 |

Reference: Online: https://www.sars.gov.za/legal-counsel/secondary-legislation/tariff-amendments/tariff-amendments-2024/; Date: 1 February 2024

## Dispute Resolution and Judgment

## December 2023

## Diesel Refund Scheme

Considering the outcome of case law:

| Date | Theme | Description |
|---|---|---|
| 1 December 2023 | Legal Counsel: Dispute Resolution & Judgments – High Court 2025 - 2023 | The Customs Act: *Canyon Resources (Pty) Ltd v CSARS (68281/2016) [2023] ZAGPPHC (30 November 2023)* Rebate item 670. 04 – 'Diesel refund' – application for setting aside determination made by SARS which had been referred in part for the hearing of oral evidence – evidence presented by the user insufficient to justify a finding that the determination whereby refund claims were disallowed should be set aside. |

Reference: Online: https://www.sars.gov.za/whats-new-at-sars/2/; Date: 5 December 2023

**SAIT Customs Comment**

In short, it seems that despite the fact that the applicant introduced the logbooks by way of oral evidence to better explain the usage of the logbooks, that the logbooks did not meet the requirements set by SARS for confirming the eligibility of the refunds claimed.

The logbooks lacked specific details, such as vehicle descriptions and accurate fuel usage information, which made it difficult to determine if the fuel usage qualified as eligible.

Additionally, the logbooks could not verify the correctness of the amount of non-eligible diesel.

Therefore, the court concluded that the logbooks submitted for verification did not meet the criteria specified in Note 6 of rebate item 670.04 in Schedule 6 of the Customs Act.

# PART D – GENERAL MATTERS OF INTEREST

## The European Union's Deforestation Regulation (EUDR)

**February 2024**

What is the EUDR?
The EUDR refers to the principal obligation placed on companies to comply to the relevant regulation and to produce a due diligence statement that verifies the product is deforestation-free and has been produced in accordance with the relevant legislation of the country of origin. Without this due diligence statement, products cannot be sold in, or exported from the EU market.

What is the objective?
The regulation aims to achieve this objective by prohibiting the sale or export of certain goods to or from the EU market unless it can be proven they are deforestation-free and produced in compliance with the relevant legislation of the country of production.

Let us consider the context:
On 29 June 2023, the new EU Regulation on Deforestation-Free Products entered into force. The objective of the regulation is to address the EU contribution to global deforestation by increasing demand for deforestation-free products and closing existing loopholes for legal deforestation.

Which sectors will be impacted?
The regulation will have a wide reach, particularly in the consumer industry, affecting any company that sells or exports in the EU market of these commodities:

- Cattle
- Soy
- Timber
- Palm Oil

- Cocoa and Coffee
- Rubber

Future evolution:
The Commission may propose for additional commodities to be included in the regulation from mid-2025.

How will this effect South African exporters?
Every company will need to provide a due diligence statement that shows it is:

- Deforestation-free – The land on which the commodity or product was produced has been free from deforestation and forest degradation since 31 December 2020.
- Compliant with relevant legislation from the country of production – Including respect for human rights and the free, prior and informed consent of indigenous people.

What is the timeframe?
Non-SMEs will need to implement the new due diligence requirements by 1 January 2025. Companies that fail to comply could face fines of up to 4% of their turnover in the EU, or other penalties such as confiscation of their products or revenues from those products.

In conclusion, the main argument is that from 30 December 2024 only deforestation free products can enter the EU market, and this is proved by a 'due diligence' statement issued by the importer.

Reference: Online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2023.150.01.0206.01.ENG&toc=OJ%3AL%3A2023%3A150%3ATOC;
Date: 14 February 2024

# PART E – CONCLUSION

## Closing comments on international trade and modern international trade challenges

In this edition we noticed that global trade is influenced by regulations in foreign countries, which can have a significant impact on local manufacturers, distributors, and sellers when trading with overseas markets. It is essential for businesses to be aware of these regulations and understand how they may affect their operations.

Understanding foreign regulations is crucial because non-compliance can lead to various challenges and risks. Local manufacturers, distributors, and sellers need to assist importers in adhering to these regulations to ensure smooth and successful trade. This includes staying up to date with changes in regulations, maintaining proper documentation, and implementing necessary measures to comply with foreign requirements.

Furthermore, managing potential tax risks in foreign jurisdictions is equally important. Different countries have different tax laws and regulations, and failing to comply can result in penalties and legal complications. Businesses should seek professional assistance to navigate these tax complexities and ensure compliance while minimising potential risks.

By being proactive and staying informed about foreign regulations, manufacturers, distributors, and sellers can effectively participate in global trade, expand their market reach, and build successful international partnerships. Compliance with regulations and tax requirements is essential for establishing a strong and sustainable presence in overseas markets.



SAIT Technical
(T) 012 941 0412
(E) taxassist@thesait.org.za