



20 May 2022

To: The South African Revenue Service

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International Trade Administration Commission of South Africa

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RE: EXPORT OF SCRAP METALS

Dear Colleagues,

We attach the comments from the SAIT Customs & Excise Technical Work Group (the WG), on the export duty on ferrous and non-ferrous waste and scrap metals.

1. BACKGROUND

The export duty on ferrous and non-ferrous waste and scrap metals (scrap metals) imported or manufactured in South Africa came into law on 1 August 2021. Prior to the export duty, the export of scrap metals was regulated by the Price Preference System on Exportation of Ferrous and Non-Ferrous Waste and Scrap (the PPS).

The PPS was implemented in September 2013, initially for a period of 5 years and was subsequently amended and extended numerous times thereafter. The current PPS will remain in force until 31 July 2023. Therefore, we understand that the export duty on scrap metals has not replaced the PPS, but rather remains in force to support the PPS.

In terms of the PPS, exporters of scrap metals are required to first offer their scrap metals for sale to local foundries and mills for a period, at discounted prices or a price based on a formula determined by the International Trade Administration Commission of South Africa (ITAC). As a result, exporters of scrap metals are obliged to apply for an export permit from ITAC, prior to exporting the goods from South Africa.

The application which lists the volumes intended for export, must be submitted to ITAC. With this information, ITAC compiles a circular to be distributed to the local foundries and mills. The circular is valid for a specified period. ITAC thereafter



reduces the original application by the volumes purchased. At the end of the circulation period, ITAC issues an export permit for the volumes of scrap metals not purchased. As a result, exporters are only able to export the scrap metal that was not purchased after the exporter has obtained the relevant export permit from ITAC.

Therefore, even after the scrap metal offered is not purchased by local foundries and mills and the export permit has been issued, exporters of scrap metals are required to pay export duties on the scrap metal that has not been purchased by the domestic consuming industry. For imported scrap metals intended for subsequent export, regardless of the purpose for which it has been imported, exporters are required to offer the imported scrap metals to the local industry first and, should the scrap metal not be purchased, obtain an export permit and pay export duties before exporting the scrap metals from South Africa.

Essentially, it appears as if the importer is being punished for importing into South Africa, despite the fact that they create jobs (sorting, refining etc.). This conclusion is reached because the existence of both the PPS and export tax means that the importer incurs the cost of importing, and the importer is also still required to offer the scrap to local foundries at a discount.

Moreover, scrap metals obtained from a process of manufacture in South Africa, regardless of whether such scrap metal is obtained as yields under customs control, the scrap metal must be offered to the local industry first. Should the scrap metal not be purchased, the exporter must obtain an export permit and pay export duties before the scrap metal is exported from South Africa.

In view of the foregoing, our submission concerns the levying of export duties on:

- (1) scrap metals obtained from the manufacturing, processing, finishing, equipping or packing of imported goods intended exclusively for export; and
- (2) scrap metals, not purchased by and after having been offered to the domestic consuming industry, exported from South Africa.

2. LEGAL NATURE OF THE PROBLEM

The Customs and Excise Act, No. 91 of 1964 (the CEA) *inter alia* provides for the levying of customs and excise duties and the prohibition and control of the importation, export, manufacture or use of certain goods. Section 48(4)(a) of the CEA empowers the Minister of Finance to impose, any export duty on any goods intended for export and any export duty imposed shall be set out under Schedule 1, Part 6. The section notes to Schedule 1 Part 6A provides the following-

The rate of export duty is payable on goods specified in this Section whether imported into or manufactured in the Republic.



As per the SARS's reply to question 6 (*Is export duty payable on scrap metal imported and on scrap metal manufactured in the Republic subsequently entered for export?*), of the SARS Frequently Asked Questions (FAQ) dated 04 August 2021, we understand that SARS's view is that-

"Imported" in Note 1 refers to imported goods specified in Schedule 1 Part 6 cleared for home consumption and subsequently cleared for export.

Therefore, export duties will only be levied on scrap metal other than scrap metal that is cleared for home consumption and subsequently cleared for export. No export duties will be levied on any scrap metal cleared for storage in a special customs and excise warehouse or any scrap metal that has been cleared for transit through South Africa. However, it is not clear how scrap metals obtained from the manufacturing, processing, finishing, equipping or packing of imported goods intended exclusively for export would be treated.

2.1. Rebate item 470.03

The challenge is first brought to bear by the meanings ascribed to the words "entry for home consumption" and "home consumption", as outlined in section 1 of the CEA-

"entry for home consumption" includes entry under any item in Schedule No. 3, 4 or 6;

"home consumption" means consumption or use in the Republic;

Based on SARS' interpretation of what is meant by "imported" in Note 1 to Schedule 1 Part 6A, any scrap metal entered under any item in Schedule 3, 4 or 6 that is cleared for home consumption or use in South Africa and is subsequently exported, is liable for export duties.

In our view, such a construction is problematic, primarily in relation to any dutiable goods or non-dutiable scrap metal cleared under the following Schedule 4 items:

- Rebate items 470.03/00.00/01.00 for Goods (excluding goods free of duty as contemplated in section 75A) cleared in terms of a permit issued by the International Trade Administration Commission, for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export.
- Rebate items 470.03/00.00/02.00 for Goods free of duty, for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export.

Furthermore, any goods cleared under rebate 470.03 are exempt from the payment of value added tax (VAT) (section 13(3), Schedule 1 of Value Added Tax, No. 89 of 1991).



Therefore, any yields of scrap metal obtained from dutiable goods imported under rebate item 470.03/00.00/01.00 for use in the manufacture, processing, finishing, equipping or packing of scrap metal exclusively for export are liable to export duties.

Any non-dutiable scrap metal cleared under rebate item 470.03/00.00/02.00 for use in the manufacture, processing, finishing, equipping or packing exclusively for export is liable to export duties. In practice, for purposes of complying with the PPS, scrap metal obtained from a process under rebate item 470.03 must first be offered to the domestic consuming industry before the goods are exported.

However, according to paragraph 9.7 to *Rebate item 470.03- External Guide SC-PR-01-22* dated 14 January 2014, the exporter must first obtain SARS permission to dispose the scrap locally. Once issued, the exporter may offer the scrap metal to the domestic consuming industry.

If purchased, any scrap metal obtained from dutiable goods cleared under rebate item 470.03/00.00/01.00, the exporter must submit an amended clearance declaration bringing a pro-rata of the customs duty and VAT amount rebated at the time of import to account. Any non-dutiable scrap metal or goods cleared under rebate item 470.03/00.00/02.00, the VAT exempted on the imported goods should be paid to SARS on a pro-rata basis as well. If not purchased, ITAC will issue an export permit and the exporter must pay export duties prior to removing the goods from South Africa.

Finally, paragraph 3.6 of the *ITAC Guidelines, Rules and Conditions Pertaining to Rebate item 470.03* provide that the purpose of rebate item 470.03 is to-

...assist exporters in avoiding the strain imposed on their liquidity by the outlay of capital in respect of customs and other applicable duties payable on the raw materials or components at the time of importation.

In view of the above, exporters of scrap metal obtained from any goods cleared under rebate item 470.03 remain under the strain. For purposes of availing the scrap metal produced to the local market, exporters of scrap metals must outlay the customs duties and VAT on the imported products even when such goods are entered under rebate item 470.03.

The customs duty and VAT relief afforded on the imported goods is effectively taken away should the scrap metal be purchased locally. Added to this, scrap that would otherwise have attracted no export duty at exportation (as the scrap is manufactured under rebate item 470.03 conditions), now attract export duty.



The exporter will also incur additional administrative costs for obtaining the required SARS permission and preparing the amended clearance declarations for bringing the pro-rata amount in customs duties and VAT to account. Should the scrap not be purchased locally, the export duties apply.

In our view, subjecting the scrap metal obtained from any goods cleared under rebate item 470.03 goes against the very purpose of the rebate item. It adds additional costs in the form of customs administration, import and export duties for exporters.

2.2. Export of scrap metals after having been offered to the domestic consuming industry and not purchased

The Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Waste and Scrap, Government Gazette No.37992 dated 12 September 2014, (the Guidelines) provides that the PSS was established “*not to allow the exportation of scrap metal unless it had first been offered for sale for domestic beneficiation, to the domestic consuming industry, for a period and at a price discount or other formula determined by ITAC*”. Paragraph 6.3 of the Guidelines also provides that ITAC will issue an export permit for any volumes of scrap metal not purchased in the domestic consumer market.

Therefore, any scrap metal not purchased in South Africa may be exported, provided the exporter has an ITAC issued export permit. Furthermore, even after offering such scrap metal to the domestic consuming industry and the scrap metal is not purchased, the exporter is required to pay export duties on the scrap metal when such scrap metal is exported from South Africa. As per the SARS answer to question 3 in the SARS FAQ-

“The objective of export duty on scrap metal is to provide foundries and mills with better access to higher quality and more affordable scrap metal in the local market.”

If the domestic foundries and mills have been afforded access to quality scrap metal at affordable prices and the industry does not purchase the scrap because it cannot readily consume it, the domestic industry has in effect rejected such scrap metal. However, exporters of rejected scrap are still required to pay export duties on the rejected scrap metal. It is not clear why this is so or whether if it was indeed the intention of the policy makers.

The export duties penalize exporters who in the cause of conducting legitimate trade, comply with the PPS and CEA in relation to export duties. Exporters who are not able to sell the scrap at globally competitive prices due to export duties will not be able to find buyers in export markets while the local industry is not willing to purchase the same scrap either.



There appears to be no reason why exporters who are able to find buyers externally for the rejected scrap metal should be penalized with export duties on the scrap metal that has been rejected by the domestic consuming industry.

3. PROPOSAL AND RECOMMENDATIONS

While we understand South Africa's need to improve the availability of better-quality scrap metal at affordable prices to the domestic market, the promotion of South African exports remains critical to the stimulation of industrial development and economic growth. We are of the view that a careful balance of the two should lead to a more equitable and practical operation of the law. We therefore call on ITAC and SARS to consider the following proposals and recommendations:

- 3.1. Delete the definitions of “*entry for home consumption*” and “*home consumption*” as contemplated section 1 of the CEA. Insert the definition of “home use” as provided under section 1 of the Customs Control Act No. 31 of 2014 (the CCA)-

“home use”, in relation to imported goods, means that the goods may be consumed, utilised, processed or otherwise disposed of in the Republic as goods that are no longer subject to customs control;

- 3.2. Amend the Section Notes to Schedule 1 Part 6 A by the insertion of the words “**for home use**” as follows -

*The rate of export duty is payable on goods specified in this Section whether imported [**for home use**] into or manufactured in the Republic.*

- 3.3. We recommend that the SARS's reply to question 6 of the SARS FAQ dated 04 August 2021, should also be amended to align with the above proposal. Therefore “**Imported**” in Note 1 should refer to imported goods specified in Schedule 1 Part 6 cleared for **home [use]** and subsequently cleared for export. The practical effect of the above construction should exempt the levying of export duties on imported scrap metal entered for a purpose other than home use, that is, scrap metals obtained from the manufacturing, processing, finishing, equipping or packing of imported goods intended exclusively for export and scrap metals imported for storage in a special customs and excise warehouse in or conveyed in-transit through South Africa and subsequently exported in the same condition as previously imported.
- 3.4. Amend the Section Notes to Schedule 1 Part 6A by the insertion of a note exempting the levying of export duties on any scrap metal that has not been purchased by the domestic consuming industry and exported on an ITAC export permit.



- 3.5. Finally, in the interest of ensuring poor quality scrap is not trapped in South Africa due to export duties, a more descriptive “Article Description” and corresponding rates of export duties should be considered under Schedule 1, Part 6A. The article description should include quality as a distinguishing factor in the description as well.

4. CONCLUSION

The WG appreciates the opportunity to provide the above comments to you. We would welcome further engagement on the contents of this submission.

Please do not hesitate to contact us should you require further information.

Yours faithfully,

SAIT Customs & Excise Technical Work Group

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