

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 93 OF 2021

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

GUIDELINES, RULES AND CONDITIONS PERTAINING TO:

Rebate Item 311.40/00.00/01.04 “Textile yarns and textile fabrics, classifiable in Section XI of the Customs Tariff and approved by the International Trade Administrations Commission (ITAC) through a Notice in the Government Gazette as qualifying yarns and fabrics that may be imported under this rebate item for the manufacture of apparel and clothing accessories classifiable in Chapters 61 and 62, in such quantities, at such times and subject to such conditions as ITAC may allow by specific permit, provided that –

- (i) ITAC or equivalent authority in SACU member states, is satisfied that the apparel and clothing accessories manufactured in terms of this item are supplied to and sold by retailers in the country in which the rebate permit will be issued;**
- (ii) as evidence in support of (i) above, the application for a permit must be supported by an order/orders from retailers in the country where the application is made; and**
- (iii) the yarns and fabrics are not specifically covered by another rebate provision in Schedule No. 3 for the same industry and purpose”.**

ITAC will publish a notice in the Government Gazette, which will also be on ITAC's website at www.itac.org.za highlighting the manufacturing requirements of a 3rd Schedule rebate provision, which is an industrial rebate item linked directly to a specific manufacturing process, which has to take place in the same country that the permit was issued in, as well as setting out the rebate conditions listed below:

- (i) ITAC will limit the rebate provision to a list of qualifying products. Such list to be determined and published by ITAC in the Government Gazette as well as on its website, which is aligned and attached to reciprocal off-take commitments as identified by the DTIC, within the ambit of the R-CTFL Masterplan. In the first 12 months, the rebate item be applicable only for the importation of woven textile fabrics classifiable under chapters 51, 52, 53, 54, 55 and tariff heading 58.01 for the manufacture of apparel and clothing accessories classifiable under Chapter 62. The rebate permit issued by ITAC or equivalent authority in SACU member states must reflect conditions (i), (ii) and (iii) listed in the rebate item.
- (ii) Current volume and value offtake from local Textile Mills not to be reduced
- (iii) Develop opportunities to deepen the value chain
- (iv) Price Restraint
- (v) Rebate review in 18 months or such period as deemed appropriate by the Commission

Note: In terms of section 26 (4) of the International Trade Administration Act, 2002, the Commission may, *inter alia*, require an applicant to provide additional information in respect of the application. The conditions attached to and the information requested below reflects the minimum requirements, which ITAC would apply to evaluate an application under this rebate provision.

1. Qualifying products will be published in the Government Gazette Notice, such notice to be available on ITAC's website at www.itac.org.za under the following

link <http://www.itac.org.za/pages/services/tariff-investigations/guidelines-questionnaires>.

2. Applicants must register with the South African Revenue Service (SARS) as a rebate user before applying for a rebate permit and must acquaint themselves with the requirements of SARS. The applicants must submit a SARS letter of approval for registration as a rebate user in terms of Schedule 3 to import and use the material under the provisions of this rebate item.
3. Applications for permits must be addressed to the International Trade Administration Commission (ITAC), Private Bag X 753, Pretoria, or delivered by hand to the DTI Campus, (Block E), 77 Meintjies Street, Sunnyside, Pretoria, 0002.
4. Applications for permits must be submitted according to the requirements of the attached application form. If the space provided in the application form is insufficient, please use the format of the application form to submit the requested information.
5. If all the information requested in the application form is not submitted, the application will be deemed as deficient and the application will not be considered.
6. At least fourteen (14) working days should be allowed for the processing of applications and the issue of permits, provided that all necessary information, which renders the application duly completed, has been submitted to ITAC.
7. Each rebate permit issued defines the period during which the goods concerned can be cleared under the rebate. The period for each permit will be decided by ITAC and commences on the date on which the permit was issued. The permit may be issued for a shorter period as requested by the applicant, or as decided upon by ITAC.
8. If an applicant intends to apply for a subsequent permit for which the period of validity should commence on the day after the expiry date of the previous permit issued, this must be clearly indicated in a new application. The application must be submitted to ITAC at least fourteen (14) working days prior to the expiry date of the previous permit as permits cannot be issued with retrospective effect.
9. Rebate permits may not be transferred in any manner by the holder thereof to any other person, or be used for the benefit of any person or entity, not named in the permit. Permits will reflect the sub-contractor's name and details, where applicable.
10. Any request for an amendment to a rebate permit must be forwarded to ITAC for consideration. Amendments will only be considered in the following instances:
 - a) Error by ITAC on permit;

- b) Error by applicant regarding the product description or tariff subheading. This will only be processed if the request is accompanied by a confirmation from SARS in this regard.
11. Should any party misplace a permit, the applicant should submit an affidavit on a company letterhead endorsed by a Commissioner of Oath, stating that the permit was lost and the circumstances surrounding the loss of such permit. ITAC may, on the facts furnished, exercise its discretion to issue a new permit that replaces the lost permit. Should the lost permit be found the applicant must return such permit to ITAC.
12. Extension of the period (as provided for in paragraph 7) from which the permit is valid may be granted. Extensions will only be granted where the relevant permit has not expired, and in the view of ITAC, good cause warrants extension of such permit. Such discretion shall lie solely with ITAC. Extensions will only be permitted for a period up to 3 months and the party applying for the extension must submit a letter and supporting documents to ITAC, furnishing reasons and good cause for the extension.
13. Rebate permits issued will be subject to the following conditions, safeguards and reciprocities:
- 13.1. The apparel and clothing accessories made from fabrics imported under this rebate must be destined for retailers that have made local procurement commitments in terms of the R-CTFL Masterplan and have signed the Masterplan or do so in future and that have concluded the necessary Off-take Agreements.
- 13.2. The eligible importers of the textile fabric imported under this rebate must be:
- a) Clothing manufacturers with Compliance Certificates from the National Bargaining Council for the Clothing Manufacturing Industry and must supply retailers that are signatories to the R-CTFL Masterplan with clothing/apparel made from the fabric imported under this rebate. Such manufacturers must also be South African Revenue Service (SARS) and Companies and Intellectual Properties Commission (CIPC) compliant;
- b) Textile mills that add value, by dyeing and/or printing greige fabric (but not already printed fabric, already dyed fabric or yarn/fibre dyed fabric). Such dyers and/or printers of greige fabric must be registered with the National Textile Bargaining Council and have a Compliance Certificate from this Council and supply these fabrics to clothing manufacturers with Compliance Certificates from the National Bargaining Council for the Clothing Manufacturing Industry that supply retailers that are signatories of the R-CTFL Masterplan. Such mills must also be South African Revenue Service (SARS) and Companies and Intellectual Properties Commission (CIPC) compliant.
- 13.3. At the date of the implementation of the rebate, producers of applicable textile fabric will have up to two weeks to provide offtake volume and value claims

based on textile fabric produced for Chapters 61 and 62 apparel, and clothing accessories, over any 12-month period from 1 March 2018 to 31 March 2020. Such Off-take claims to be submitted to the Off-take Resolution Team (ORT) as mentioned in paragraph 13.5 below.

- 13.4. Within a further two weeks, Off-take Agreements should be concluded by retailers directly with relevant textile mills.
- 13.5. In the event of disputes in resolving Off-take Agreements, an Off-take Resolution Team (ORT) comprising, *inter alia*, a representative of each of the National Clothing Retailers Federation (NCRF), the Southern African Clothing and Textile Workers Union (SACTWU), the Department of Trade, Industry and Competition (DTIC) and from the woven textile sector, will, within 2 further weeks, facilitate the conclusion of the necessary Off-take Agreements, using a process which may include the following:
 - 13.5.1. The Off-take Agreements will need to be co-signed by respective manufacturers of clothing products.
 - 13.5.2. The ORT will collate for each retailer the respective, collective and ratified, Volume and Value of each textile mill for consideration by the respective Retailer.
 - 13.5.3. Once the respective Volume and Values are agreed, each Retailer and the respective manufacturer will conclude with each textile mill an Offtake Agreement to ensure that a minimum of the agreed Value and/or Volume of textile fabric will be used in the production of apparel and clothing accessories.
- 13.6. Once 90% of all tabled off-take requests are resolved with Off-take Agreements, ITAC will start to issue rebate permits that have been applied for. ITAC, with assistance from the ORT, may act as the final arbiter on whether 90% of offtake requests have been concluded to allow full access to the rebate for qualifying participants.
- 13.7. If there are no continued orders for fabrics that are the subject of an Off-take Agreement, the retailer and clothing manufacturer will explore alternative and appropriate options in an attempt to meet or exceed commitments contained in the relevant Off-take Agreement.
- 13.8. Off-take Agreements must be processed/honoured within 9 months of the rebate start date.
- 13.9. Clothing manufacturers would be allowed to outsource a maximum of 50% of their production and Design Houses 100%.
- 13.10. Rebated textiles imported in terms of this rebate provision will not be transferred to the Republic of Botswana, Eswatini, Kingdom of Lesotho and Namibia (BELN) or any other country outside of the Republic of South Africa for further processing.

Difference between manufacturers and Design Houses:

- 13.11. Design Houses are principal suppliers of apparel (i.e. clothing) to the retailers, as accredited by Masterplan participating Retailers and accepted by the National Bargaining Council (NBC) and Program Management Office (PMO). However, they do not own factories but contract to various cut-make-trim operators (CMTs). Manufacturers, also principal suppliers, traditionally own factories and may manufacture all orders or manufacture a percentage and contract a percentage to CMTs.
- 13.12. Outsourcing should only happen under the following circumstances:
- 13.12.1. The manufacturers and Design Houses that outsource would need to set up and be responsible for the rebate stores.
- 13.12.2. Any violation of the rebate store rules may see these manufacturers and Design Houses being unable to use this rebate anymore and pay the necessary penalties as determined by ITAC and/or SARS.
- 13.12.3. Design Houses that participate would need to have Compliance Certificates from the National Bargaining Council for the Clothing Manufacturing Industry.
- 13.12.4. Sub-contractors that have been outsourced by manufacturers and Design Houses would need to have Compliance Certificates from the National Bargaining Council for the Clothing Manufacturing Industry or the National Textile Bargaining Council, whichever is applicable.
- 13.13. The rebate facilities will be subject to a price restraint. Local fibre, yarn, and textile producers and manufacturers, in exchange for off-take commitments from downstream off-takers, should make an undertaking that price increases should not exceed the producer price index, unless there are compelling reasons.
- 13.14. Rebate facilities will be subject to an external independent audit report which will assess compliance. These audits will have to be conducted to prevent unintended consequences from occurring. The logistics of this to be discussed by the ORT.
- 13.15. The applicant must provide a formal letter on the applicant's business letterhead confirming that the applicant complies with labour laws, regulations and agreements gazetted by the Minister of Labour.
- 13.16. The applicant must provide ITAC with its current SARS electronic access PIN, in order to enable ITAC to verify full tax compliance status.
- 13.17. To deepen the value chain and grow and strengthen the textile sector, the DTIC's PMO will lead industry discussions on increasing the volumes of fabric and yarn off-take commitments annually and identifying new fabrics that can be produced by and purchased from local mills. These discussions should commence no later than six months after the introduction of this rebate.

- 13.18. As a rebate provision is considered for the purpose of providing relief to domestic producers that may be experiencing injurious import pressures, support will be tied to conditions related to economic performance over time and may be reviewed after a specified period.
- 13.19. The applicant must commit, *inter alia*, to the creation of employment and provide in each permit application the number of jobs it expects to create annually as a result of the rebate provision. The applicant must submit to ITAC an annual report on its job creation performance.
- 13.20. An applicant must submit a certified copy of irrevocable purchase order from the retailer/s. The retailer's purchase order should include standardized information such as:
- a) Quantity and pricing of garments;
 - b) Body fabric/s rating per size;
 - c) Other component of fabric/s rating per size;
 - d) Size set and ratio;
 - e) Total quantity of fabric required to be rebated in square meters; and
 - f) Fabric rating.
- 13.21. An undertaking by an authorised person on a company letterhead that the rebate provision will not reduce the consumption of locally produced fabrics below previous year consumption levels.
- 13.22. The applicant will be obliged to provide the following details, verified and certified by company statutory auditors:
- a) Additional sales volume, value and % change due to rebate provision;
 - b) Additional production due to rebate provision;
 - c) Additional employment due to rebate provision;
 - d) Additional remuneration to employee due to rebate provision; and
 - e) Change in cost structure due to duty rebate provision. The issuance of rebate permits under this rebate facility may be suspended if deviations from the programme or unintended consequences occur.

Non-compliance to the conditions of the permits:

14. If a *prima facie* case is established that any condition of this permit is not complied with, the consignment in terms of which the rebate permit was used can be seized by ITAC and the rebate permit will be temporarily suspended while ITAC conducts an investigation. If it is established that non-compliance took place, appropriate steps will be taken. These steps will be taken in terms of the International Trade Administration Act and the Customs and Excise Act, and can include, criminal charges, withdrawal of the permit or permits concerned.