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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
	GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS		
	Trade, Industry and Competition, Department of / Handel, Nywerheid en Kompetisie, Departement van		
R. 80	International Trade Administration Act (71/2002): : Automotive Production and Development Programme post 2020 Regulations	44144	3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

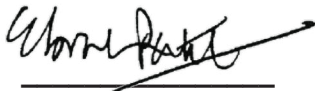
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. R. 80

11 February 2021

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA**Automotive Production and Development Programme post 2020 Regulations**

I, Ebrahim Patel, in my capacity as the Minister of Trade, Industry and Competition, acting under the powers vested in me by Section 59 of the International Trade Administration Act 2002, (Act No. 71 of 2002) hereby publish Regulations governing the **Automotive Production and Development Programme post 2020 (APDP Phase II)**, effective 01 July 2021.

**Ebrahim Patel****Minister of Trade, Industry and Competition**

Date: ...04/02/2021.....

REPUBLIC OF SOUTH AFRICA

**THE INTERNATIONAL TRADE ADMINISTRATION
COMMISSION OF SOUTH AFRICA**

**APDP PHASE 2 (APDP 2) REGULATIONS
1 JULY 2021**

TABLE OF CONTENTS

Part A – Definitions

1. Definitions

Part B – General Provisions

2. Objectives of APDP Phase 2
3. Applicability of the Regulations
4. Participation under APDP Phase 2
5. Structure of the APDP Phase 2

Part C – Production Rebate Certificates

6. What is a PRC
7. Calculation of Production Incentive (PI)
8. Who may apply for a PRC
9. Eligible Products under the APDP Phase 2
10. Standard materials
11. Yearly PI Factor Percentage
12. Application for PRCs
13. Issuing of a PRC
14. Usage of a PRC
15. Verification and modification of a PRC

Part D – Calculation of the CSP for VALA purposes

16. CSP and calculation thereof
17. Entities qualifying for CSP
18. VALA Usage

Part E – Imported Content Values

19. Form C2
20. Declaration of imported content values
21. Calculation of imported content values

Part F – Transitional Notes

22. Quarterly Customs account and other matters

Part A – Definitions

1. Definitions

"Automotive tooling" means –

- (i) dies for drawing or extruding metal, of subheading 8207.20;
- (ii) tools for pressing, stamping or punching, of subheading 8207.30;
- (iii) work holders of subheading 8466.20;
- (iv) assembly jigs and assembly lines, of subheading 8479.89; and
- (v) injection moulds, moulding patterns and moulds of heading 84.80, where the principle use is for the manufacture of specified motor vehicles, heavy vehicles as defined in note 1 to rebate item 317.07 and automotive components for such motor vehicles.

"Accessories" means those parts which are not fitted in a special vehicle manufacturing warehouse;

"APDP Phase 2" means the Automotive Production and Development Programme - Phase 2;

"APDP Phase 2 Info Docs" refers to those documents that provide additional information and set forth additional rules and conditions for the APDP Phase 2, and may refer to either Info Doc A, Info Doc B and/or Info Doc C, depending on the context;

"B-BBEE" means the Broad Based Black Economic Empowerment Act 46 of 2013

"Component" means a new and unused article (not second hand, reconditioned or refurbished) manufactured in the SACU region which can be identified as being suitable for use in the manufacture of:

- (i) Specified motor vehicles manufactured under Rebate Item 317.04 of Schedule No. 3 to the Customs Act;
- (ii) Specified motor vehicles manufactured abroad;
- (iii) Automotive components for medium and heavy motor vehicles manufactured under rebate item 317.07 of Schedule No. 3 to the Customs Act; and
- (iv) Medium and heavy motor vehicles manufactured abroad

"Consumables" mean those goods which are used in the manufacture of motor vehicles, motorcycles and components thereof, but do not form an integral part of such motor vehicles, or components or are used in the manufacturing of automotive tooling;

"CSP" means the Company Specific Percentage;

"Customs Act" means the Customs and Excise Act, 1964 (Act No. 91 of 1964);

"Eligible products" mean those specified motor vehicles, automotive components and automotive tooling adhering to the qualifying criteria set out in section 9 hereof;

"EPC" means the eligible production certificate envisaged in terms of Section 9 hereof;

"Environmental levy" means levy imposed on tyres manufactured in South Africa in terms of rebate item 152.00 in Section E of Part 3 of Schedule 1 to the Customs Act.

"Final manufacturer" means the following entities based in South Africa:

- (i) Registered light motor vehicle manufacturers, manufacturing specified motor vehicles in South Africa, adhering to the qualifying criteria as set out under section 9, according to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule No.1 to the Customs Act;

- (ii) Automotive component manufacturers manufacturing components in South Africa adhering to the qualifying criteria as set out under section 9;
- (iii) Automotive tooling manufacturers manufacturing automotive tooling in South Africa adhering to the qualifying criteria as set out under section 9; and
- (iv) Registered light motor vehicle manufacturers, manufacturing specified motor vehicles in South Africa adhering to the qualifying criteria as set out under section 9, according to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule No.1 to the Customs Act recovering the cost of:
 - platinum group metals which were sold to a final manufacturer of a catalytic converter and other costs relating to the manufacture thereof; and
 - value adding activities applicable to products bought from a component manufacturer, noted in (ii), and exported.

“Form C2” means a certificate declaring the imported content values in respect of imported components and imported raw materials received from any person in the SACU for use in the manufacture of specified motor vehicles.

“Imported content value ” means the value for customs duty purposes of any imported original equipment components and raw materials imported by the registrant or imported by or received from any person in SACU and used in the manufacture or assembly of original equipment components and/or automotive tooling or specified motor vehicles;

“ITAC” means the International Trade Administration Commission of South Africa established in terms of section 7 of the International Trade Administration Act, 2002, (Act No. 71 of 2002);

“Minister” means the member of the Cabinet responsible for Trade, Industry and Competition;

“**OEM**” means a registered light motor vehicle manufacturer in terms of Note 1 to Chapter 98 of Part 1 of Schedule No. 1 to the Customs Act of 1964;

“**Non-standard material(s)**” means any imported component, and/or raw material, and/or any material or component other than the defined standard material, used in the manufacture of any qualifying or eligible product.

“**PI**” means production incentive;

“**PRC**” means a production rebate certificate as described in Section 6 hereof;

“**quarter**” means a calendar quarter, unless otherwise specified in these Regulations, and refers to the period 1 January to 31 March, the period 1 April to 30 June, the period 1 July to 30 September and the period 1 October to 31 December;

“**Dead quarters**” means the relaxation of the quarterly volume threshold requirement for a period of two consecutive quarters as a result of the introduction of a new model;

“**Registered light motor vehicle manufacturer**” means a manufacturer of specified motor vehicles;

“**SACU**” means the Southern African Customs Union;

“**SARS**” means the South African Revenue Service;

“**Semi-Knocked Down**” means a vehicle manufactured to an untrimmed painted body condition with no parts assembled to the body;

“**Selling price**” means the price as indicated in the tax invoice of the final manufacturer exclusive of VAT, *ad valorem* excise duty, environmental levy and any other cost which has no bearing on manufacturing, as specified in note 4.3 to APDP2 Info Doc A;

"Specified motor vehicles" means:

- (i) Road tractors or semi-trailers of subheading 8701.20 of a vehicle mass not exceeding 1 600 kg;
- (ii) motor vehicles for the transport of ten or more persons, including the driver, of heading 87.02, of a vehicle mass not exceeding 2 000 kg, (excluding those of subheading 8702.10.10);
- (iii) motor cars (including station wagons) of heading 87.03;
- (iv) motor vehicles for the transport of goods of heading 87.04 of a vehicle mass not exceeding 2 000 kg or a G.V.M. not exceeding 3 500 kg or of a mass not exceeding 1 600 kg or a G.V.M. not exceeding 3 500 kg per chassis fitted with a cab (excluding motor vehicles of subheading 8704.10, shuttle cars and low construction flame-proof vehicles for use in underground mines and off the-road logging trucks); and
- (v) chassis fitted with engines of heading 87.06, of a mass not exceeding 1600 kg or a G.V.M. not exceeding 3 500 kg (excluding those for motor vehicles of subheading 8704.10, shuttle cars and low construction flame-proof vehicles, for use in underground mines and off-the-road logging trucks);

"Standard materials" mean locally beneficiated raw materials originating in the SACU which have been processed to suit automotive specifications as listed in note 4.4 of APDP2 to Info Doc A for which a duly completed SMD form has been received from a supplier;

"SVA" means standard value added, which is the portion or percentage of standard material, deemed to be local value added;

"The dtic" means the Department of Trade, Industry and Competition;

"Value added" means the selling price less the value of non-qualifying material and components;

“**VALA**” means the volume assembly localisation allowance and is calculated as per rebate Item 317.04 of the Customs and Excise Act 1964.

Part B – General Provisions

2. Objectives of APDP2

2.1 The objective of the programme is to support the vision of the South African Automotive Masterplan of creating a “globally competitive and transformed automotive industry that actively contributes to the sustainable development of South Africa’s productive economy, creating prosperity for industry stakeholders and broader society”. This vision will guide the development of the South African automotive industry to 2035, with all the policy elements of Phase 2 of the APDP targeting its realization.

3. Applicability of the Regulations

3.1 The Regulations will be applicable in SACU and must be read together with Rebate Item 317.04 of Schedule No. 3 to the Customs and Excise Act of 1964 and all APDP2 Information Documents. If any inconsistency exists between the APDP2 Regulations and APDP2 Info Docs, the obligations imposed by the Regulations prevails.

4. Participation under the APDP Phase 2

- 4.1 Participation under the APDP Phase 2 is voluntary;
- 4.2 By registering under and participating under the APDP Phase 2, a participant unconditionally binds itself to the rules and conditions of the APDP2 as determined by ITAC in these Regulations and the APDP2 Info Docs; and
- 4.3 By participating under the programme, a participant binds itself to the submission of any industry data requested by ITAC or **thedtic** for monitoring purposes.

5. Structure of the APDP Phase 2

5.1 The APDP Phase 2 consists of rebates and refunds of the relevant customs duties as legislated in the Customs Act.

5.2 The relevant customs duties can be found in Chapters 87 and 98 of Part 1 of Schedule No. 1 to the Customs Act.

5.3 The relevant rebate provisions can be found in Rebate Items 317.04 and 460.17 of Schedules Nos. 3 and 4 respectively to the Customs Act.

5.4 The relevant refund provisions can be found in Items 536.00, 537.00 and 538.00 in Schedule No. 5 to the Customs Act.

Part C – Production Rebate Certificates (PRCs)

6. What is a PRC

6.1 A PRC is a duty credit certificate issued by ITAC indicating the amount of customs duty that can be rebated using the PI, which is an incentive available to final manufacturers of eligible products in South Africa.

7. Calculation of Production Incentives (PI)

7.1 The value of the PI is determined by local value addition. The result is adjusted by the PI factor provided for in section 11 hereof to arrive at the value of the PI.

7.2 The value of the PI will be further adjusted by the applicable customs duty.

8. Who may apply for a PRC

8.1 Final manufacturers of eligible products with manufacturing operations based in South Africa, which are registered with SARS as taxpayers and are B-BBEE compliant in terms of the B-BBEE codes may apply for a PRC.

8.2 Motor vehicle manufacturers registered in terms of note 17.1 of this document.

9. Eligible Products under the APDP Phase 2

9.1 The following products qualify as eligible products under the APDP Phase 2:

- 9.1.1 Specified motor vehicles fitted with an engine and gear box manufactured in a licensed, special vehicle manufacturing warehouse in South Africa;
- 9.1.2 Specified motor vehicles not fitted with an engine or gear box manufactured in a licensed, special vehicle manufacturing warehouse in South Africa;
- 9.1.3 Automotive components applicable to specified motor vehicles;
- 9.1.4 Automotive tooling;
- 9.1.5 Automotive components applicable to heavy motor vehicles as defined in Note 1 to rebate item 317.07 of Schedule No.3 to the Custom and Excise Act, 1964; and
- 9.1.6 Specified motor vehicles manufactured in a licenced, special manufacturing warehouse in South Africa, destined for assembly outside the borders of the Republic, must be in the form of kits that have untrimmed painted bodies with no parts assembled to the body (excluding those of subheading 8701.20 and 8706).

9.2 Notwithstanding section 9.1.3, 9.1.4 and 9.1.5, for their products to qualify as eligible products, component and tooling manufacturers must-

- 9.2.1 apply for an EPC in the manner and form as required by ITAC;
- 9.2.2 achieve local/international OEM supply chain turnover, excluding tooling, of at least 25 percent of total automotive turnover; or R10m in OEM supply chain invoicing per annum;

9.2.3 manufacture components and /or tooling for which a PI is claimed that are:

- (i) part of a local or international supply chain; or
- (ii) replacement parts manufactured by a manufacturer adhering to the requirements set out in section 9.2.1 and 9.2.2.

9.3 Notwithstanding sections 9.1 and 9.2, for components to qualify as eligible products, the following conditions must be met:

9.3.1 In the event of the final process of manufacture not taking place in South Africa, a determination as to the eligibility of the relevant product must be made by ITAC, provided that operations that consist only of packing or painting will not qualify as manufacturing; and

9.3.2 Not less than 25 per cent of the ex-factory selling price (exclusive of VAT, ad valorem excise duty and environmental levy) of the components, at the time of sale, is represented by the sum of –

- (i) the cost of labour incurred in South Africa;
- (ii) the value of material originating in the SACU; and
- (iii) the factory overhead expenses incurred in South Africa (excluding profit).

10. Standard materials

10.1 Material qualifying as standard materials, and thereby qualifying as value added, are those identified by the Minister and set forth in note 4.4.1 to APDP2 Info Doc A. The list of standard materials as set out in the APDP2 Info Doc may be amended on approval by the Minister.

10.2 The SVA for standard materials used in the manufacture of an eligible product will be 25 per cent of the value of the standard material.

11. Yearly PI factor percentage

11.1 The PI factor for PRC claims applicable to specified motors vehicles from 01 July 2021 will be 50 per cent; and

11.2 The PI factor for PRC claims applicable to automotive components and automotive tooling from 01 July 2021 will be 62.5 per cent.

12. Application for PRCs

12.1 To claim a PRC, an application must be lodged with ITAC in the manner and form as required in note 5 to APDP2 Info Doc A.

12.2 An application for a PRC may be lodged only once full payment for the eligible products sold have been received by the manufacturer or, in the case of vehicle capitalized by an OEM, the date of capitalisation.

12.3 The right to claim PRCs lies with the applicant who is the registered manufacturer of an eligible product, except for a component manufacturer that supplies components for fitment on line by a registered local light motor vehicle manufacturer for assembly of specified light motor vehicles, in which case the value added on the applicable components will roll up to the standard material declaration of the registered light motor vehicle manufacturer, who may claim the PRC for the manufactured vehicle that incorporates the applicable components.

12.4 Completed applications claiming PRCs must be submitted to ITAC no later than 12 calendar months from the date of the invoice for the eligible products.

13. Issuing of a PRC

13.1 A PRC will be issued at duty value for the qualifying amount, in terms of the PI, applicable to the eligible product.

13.2 Where a holder of a PRC or an applicant for a PRC or a related party to the applicant is the subject of a fraud investigation, ITAC will have the right to withdraw and/or

refuse to issue a PRC or delay subsequent applications pending the outcome of an investigation.

14. Usage of a PRC

14.1 A PRC can be used to rebate the customs duty for customs purposes of imports into South Africa of the following automotive products:

14.1.1 New right-hand drive specified motor vehicles as defined in note 1 to rebate item 317.04 to the Customs Act; and

14.1.2 Automotive components as defined in note 8 to Chapter 98 of Part 1 of Schedule No. 1 to the Customs and Excise Act for the specified motor vehicles and automotive components for which the tariff headings are listed in rebate Item 460.17/00.00/03.00 of Schedule No. 4 to the Customs and Excise Act for specified motor vehicles.

14.2 A PRC can be used only by the original holder thereof. However, the original holder of the PRC may apply to ITAC, in the manner and form prescribed by ITAC, for the PRC to be transferred to another South African entity importing eligible products listed in 14.1, upon the sole discretion of ITAC. A PRC may only be transferred once.

14.3 A PRC is valid for a period of twelve months, which period commences on the first day of the quarter in which the PRC claim was submitted to ITAC.

15. Verification and modification of a PRC

15.1 ITAC shall have the right to verify all information relating to a PRC application and may under such conditions as it may determine, restrict the value of a PRC.

15.2 ITAC has the right to amend, suspend, adjust or withdraw any PRCs issued or to be issued upon the discretion of ITAC and take such other action as provided for in the APDP2 Info Doc or as deemed fit by ITAC.

Part D – Calculation of the CSP for VALA purposes

16. CSP and calculation thereof

16.1 In terms of Note 7.1(c) to Rebate Item 317.04 of Schedule 3 to the Customs Act, the CSP is a percentage that is calculated by ITAC and is used by SARS in the calculation of the VALA.

16.2 The CSP is:

16.2.1 In the case of vehicles built for the local market, the difference between the recommended retail list price (“RRLP”) and the invoice price by the OEM exclusive of VAT, ad valorem excise duty and environmental levy), plus market related expenditure, expressed as a percentage of the RRLP; or

16.2.2 In the case of vehicles exported, the market related expenditure expressed as a percentage of the invoice price by the OEM.

16.3 In terms of Note 7.1(c) to Rebate Item 317.04 of Schedule No. 3 to the Customs and Excise Act, the CSP will be calculated by ITAC as provided for in APDP2 Info Doc B. ITAC will provide the calculated percentage to SARS, which will apply the percentage to determine the VALA for each registered light motor vehicle manufacturer.

17. Entities qualifying for CSP

17.1 Motor vehicle manufacturers with a plant capacity of 10 000 units per annum may submit applications to ITAC for registration as a specified motor vehicle manufacturer, unless otherwise determined by the Minister.

17.2 ITAC will calculate a CSP and provide the calculated percentage to SARS only where a registered light motor vehicle manufacturer achieves a minimum production level of 10 000 units measured over the most recent four quarter total in the manner and form as determined by ITAC in Info Doc B.

- 17.3 A registered light motor vehicle manufacturer that introduces a new model to replace an existing model in its manufacturing plant may apply to ITAC, in the manner and form as determined by ITAC in APDP2 Info Doc B, for two “dead quarters” to lessen the effect of a possible drop in production volumes. In the event that the overall production of the registered light motor vehicle manufacturer will not be significantly affected, ITAC may decide not to allow the “dead quarters”.
- 17.4 Motor vehicle manufacturers that are new entrants must submit an application to ITAC in the manner and form as required in APDP2 Info Doc B and will only qualify for a VALA if they have a production capacity of 10 000 units per annum.

18. VALA Usage

In terms of Note 7 to Rebate Item 317.04 of Schedule No. 3 to the Customs and Excise Act:

- 18.1 The VALA shall be used by a registered light motor vehicle manufacturer to reduce the value for customs duty purposes of original equipment components imported and the imported component values of original equipment components received from any person in the SACU region.
- 18.2 Any surplus VALA of a registered light motor vehicle manufacturer in a specific quarter will be rolled over to the next quarter and/or may be used to rebate duties on specified light motor vehicles imported by the registered light motor vehicle manufacturer upon obtaining prior written approval from the Commissioner of SARS.
- 18.3 Should a registered light motor vehicle manufacturer use the excess VALA in a quarter to rebate duties on vehicles imported, SARS will reduce the value of the VALA by 20 per cent.

Part E – Imported Component and imported raw material Value (declaration of foreign content)

19. Form C2

- 19.1 Form C2 is the form that must be used by specified motor vehicle manufacturers and component manufacturers supplying goods to specified motor vehicle manufacturers to declare their imported content values.
- 19.2 All participants in the APDP2 must use Form C2 to declare their imported content values in respect of original equipment components and material for use in the manufacture of specified motor vehicles received from any person in the SACU.
- 19.3 Any incorrect information supplied on Form C2 can render the whole document null and void and may result in the purchase price of all items in such document being regarded as imported content values.
- 19.4 If Form C2 is not obtained and completed, the imported component and imported raw material values in respect of such goods shall be deemed to be the price at which such goods were purchased.

20. Declaration of imported content values

- 20.1 Specified motor vehicle manufacturers, component manufacturers and component suppliers to specified motor vehicle manufacturers must declare the imported component and material values in respect of each type of component and materials received during a quarter.

21. Calculation for imported content values

- 21.1 The imported component and raw material values for specified motor vehicles manufactured must be determined using the method and basis of calculation as set out by ITAC in APDP2 Info Doc C titled “Declaration of imported contents”.

- 21.2 ITAC has the right to verify the correctness of the imported component and material values declared by manufacturers of eligible products by, amongst others, verifying Form C2s and related documents. Discrepancies detected by ITAC will be dealt with as provided for in APDP2 Info Doc C.
- 21.3 Values must be entered in Rand (ZAR) and may not be expressed as a percentage or as a foreign currency.

Part F – Transitional Notes

22. Quarterly Customs account and other matters

- 22.1 Note 10 to rebate item 317.04 of Schedule No. 3 to the Customs Act has reference regarding matters applicable to the quarterly Customs account of light motor vehicle manufacturers.
- 22.2 The first phase of the Automotive Production Development Programme (APDP) will end on 30 June 2021. Accordingly, although claims for sales on or before 30 June 2021 may still be submitted up to 29 June 2022, no application for a production rebate certificate certificates (PRCC) based on sales after the termination of the APDP will be entertained.
- 22.3 Specified light motor vehicles, automotive components and/or automotive tooling manufactured before 30 June 2021, but only sold after 30 June 2021, will qualify for APDP2 benefits provided that no benefits were claimed on these sales under the APDP.
- 22.4 To ease the transition from the APDP to the APDP2, the following conditions will apply to existing light motor vehicle manufacturers to qualify for a CSP during 2021:
- 22.4.1 Only light motor vehicle manufacturers that have a production capacity of 10 000 units per annum will qualify for a CSP;

22.4.2 The CSP for the third quarter of 2021 will be calculated using financial and statistical information applicable to the last quarter of 2020; and

22.4.3. A most recent four quarter total of 10 000 units must be achieved during the 3th quarter of 2022, unless an OEM has successfully applied for a dead quarter concession.

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