DEPARTMENT OF TRADE AND INDUSTRY

No. R. 483 **29 June 2012**

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

DRAFT REGULATIONS FOR THE ADMINISTRATION OF THE AUTOMOTIVE PRODUCTION DEVELOPMENT PROGRAMME (APDP).

The draft APDP regulations are hereby published for public comment. The APDP regulations should be read with rebate item 317.03 and the information documents which will be published on the SARS and ITAC website, respectively. The implementation of the APDP will be effective from 01 January 2013. Comments should be submitted in writing to:

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PUBLICATION PERIOD:
Representations relating to APDP regulations and the information documents should be submitted to the above address within four weeks (4) of the date of this notice.

REPUBLIC OF SOUTH AFRICA

THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

DRAFT APDP REGULATIONS

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Part A – Definitions

1. Definitions

"APDP" means the Automotive Production and Development Programme;

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

"component" means a new article manufactured in SACU which can be identified as being suitable for use in the manufacture of:

(i) Specified motor vehicles manufactured under Rebate Item 317.03 of Schedule No. 3 to the Customs Act; and
(ii) Specified motor vehicles manufactured abroad;

"Consumables" mean those goods which are used in the manufacture of motor vehicles and components therefore, but do not form part of such motor vehicles or components;

"CSP" means the company specific percentage;

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

"Form C1" means a certificate declaring the foreign currency usage in respect of material and/or components received from any person in the SACU for use in the manufacture of specified motor vehicles;

"EDD" means the Economic Development Department;

"eligible products" means those specified motor vehicles and/or components adhering to the qualifying criteria set out in section 9;

"EPC" means the eligible production certificate;

"foreign currency usage" means the value for customs duty purposes of any imported components and materials (excluding consumables, petrol, distillate fuels, lubricating grease and prepared engine, gearbox, steering case and drive-axle lubricating oils) imported by or received from any person in SACU and used in the manufacture or assembly of components and 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 and industry;

"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;

"PI" means production incentive;

"PRCC" means a production rebate credit certificate;

"registered light motor vehicle manufacturer" means a manufacturer of specified motor vehicles;

"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;

"SACU" means the Southern African Customs Union;

"selling price" means the price as indicated in the 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 the APDP Info Doc;

"SARS" means the South African Revenue Service;

"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;

(vi) 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 of 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 1 600 kg or of 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" means locally beneficiated raw materials which have been processed to suit automotive specifications;

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

"the dti" means the Department of Trade and Industry;

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

"VAA" means volume assembly allowance;

"vulnerable industry" means those industries determined by the Minister which will be eligible for an improved level of support under the APDP; and

"vulnerable products" means those products determined by the Minister which will be eligible for an improved level of support under the APDP.

Part B – General Provisions

2. Objectives of the APDP

The APDP is a programme which is aimed at creating an environment that will enable registered light motor vehicle manufacturers to significantly grow production volumes and component manufacturers to significantly grow value addition, leading to the creation of additional employment opportunities across the automotive value chain.

3. Applicability of the Regulations

The Regulations will be applicable in South Africa and must be read together with Rebate Item 317.03 of Schedule No. 3 to the Customs Act.

4. Participation in the APDP

Participation in the APDP is voluntary.

5. Structure of the APDP

5.1 The APDP 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 317.03 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 Credit Certificates

6. What is a PRCC

A PRCC is a document issued by ITAC indicating the PI, which is an incentive available to final manufacturers of eligible products.

7. How is the PI calculated

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

8. Who may apply for a PRCC

8.1 The following final manufacturers based in South Africa, which are registered with SARS as taxpayers, may apply for a PRCC:

8.1.1 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 1 to the Customs Act.

8.1.2 Component manufacturers manufacturing components adhering to the qualifying criteria as set out under section 9.

8.2 Notwithstanding section 8.1, a registered light motor vehicle manufacturer that does not qualify for a VAA will not quality for a PI.

8.3 By registering under and participating in the APDP, a manufacturer unconditionally binds itself to the rules and conditions of the programme as determined by ITAC in these Regulations and the APDP Info Docs.

9. Eligible Products under the APDP

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

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; and

9.1.3 components.

9.2 Notwithstanding section 9.1.3, to have their products qualify as eligible products, component manufacturers must –

9.2.1 apply for an EPC in the manner and form as required by ITAC;

9.2.2 achieve an OEM supply chain turnover of at least 25 per cent of total automotive turnover or R10m in OEM supply chain invoicing per annum, whichever comes first; and

9.2.3 manufacture components for which a PI is claimed that are:

(i) part of a local or international OEM supply chain; or

(ii) replacements parts manufactured by a manufacturer adhering to the requirement set out in section 9.2.2.

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

9.3.1 the components are wholly manufactured in SA, 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 SACU;

(ii) the value of material; and

(iii) the factory overhead expenses incurred in SACU (excluding profit).

9.4 Notwithstanding section 9.1 to 9.3, ITAC may specify additional requirements or amend existing requirements for specified motor vehicles or components to qualify as eligible products.

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 the APDP Info Doc. The list of standard materials as set out in the APDP 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

The PI factor for PRCC claims for the period 1 January 2013 to 31 December 2013 will be 55 per cent and will be reduced by one per cent per annum to 50 per cent, which percentage will be applicable from 1 January 2018 onwards.

12. Vulnerable industries and products

12.1 Vulnerable industries and products are those identified by the Minister and set forth in the APDP Info Doc.

12.2 Notwithstanding section 10.2, for vulnerable industries and products the SVA for the standard materials used in the manufacture of an eligible product will be 40 per cent of the value of the standard materials for the period 1 January 2013 to 31 December 2014 and will be reduced by 5 per cent per annum from 1 January 2015 to 25 per cent, which percentage will be applicable from 1 January 2017 onwards.

12.3 The PI factor for vulnerable industries and products will be 80 per cent and will be reduced by 5 per cent per annum from 1 January 2015 to 50%, which percentage will be applicable from 1 January 2020 onwards.

12.4 The SVA indicated in section 12.2 and the PI factor indicated in section 12.3 may be amended on approval by the Minister.

13. How and when to apply for a PRCC

13.1 To claim a PRCC, an application must be lodged with ITAC in the manner and form as required in the APDP Info Doc.

13.2 An application for a PRCC may be lodged only once full payment for the eligible products sold have been received by the manufacturer.

13.3 PRCCs may be claimed only by the registered manufacturer of the eligible product. However if a manufacturer supplies components that qualify as eligible products to a registered light motor vehicle manufacturer for fitment on line, the registered light motor vehicle manufacturer may claim the PRCC for these components.

13.4 Completed applications claiming PRCCs must be submitted to ITAC no later than 12 months from the date of the invoice of the eligible products.

14. Issuing of a PRCC

14.1 A PRCC will be issued for the qualifying amount, in terms of the PI applicable to the eligible product and will indicate whether it is based on production of:

14.1.1 specified motor vehicles;

14.1.2 specified motor vehicles without an engine and/or gearbox; or

14.1.3 components.

14.2 Where a PRCC that has been issued for the production of components or specified motor vehicles without an engine and/or gearbox is used to reduce the duty on imports of specified motor vehicles, SARS will reduce the value as shown on the PRCC by 20 per cent.

14.2 Where an applicant for a PRCC or a related party to the applicant is the subject of a fraud investigation by the South African Police Service, SARS, ITAC, EDD or the dti, ITAC will have the right to refuse to issue a PRCC.

15. Usage of a PRCC

15.1 A PRCC can be used to reduce the value for customs duty purposes of imports into SACU of the following automotive products:

15.1.1 new right-hand drive specified motor vehicles;

15.1.2 components for which the tariff headings are listed in Rebate Item 460.17/00.00/02.00/07 of Schedule No 4 to the Customs Act for all of specified motor vehicles.

15.2 A PRCC may be used only by the original holder of the PRCC. However, the original holder of the PRCC may apply to ITAC, in the manner and form as required by ITAC, for the PRCC to be transferred to another entity. ITAC will approve only a single transfer of a PRCC.

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

16. Verification and modification of a PRCC

16.1 ITAC shall have the right to verify all information relating to a PRCC application.

16.2 ITAC shall have the right to amend, suspend, adjust or withdraw any PRCCs issued or to be issued and take such other action as provided for in the APDP Info Doc.

Part D – Foreign Currency Usage

17. What is Form C1

17.1 Form C1 is the form that must be used by specified motor vehicle manufacturers and component manufacturers supplying goods to specified motor vehicle manufacturers to the declare their foreign currency usage.

17.2 In terms of Note 7.3 to Rebate Item 317.03 of Schedule No 3 to the Customs Act, all participants in the APDP must use Form C1 to declare their foreign currency usage in respect of original equipment components for use in the manufacture of specified motor vehicles received from any person in the SACU.

17.3 Any incorrect information supplied on Form C1 can render the whole document null and void and may result in the purchase price of all items in such document being regarded as foreign currency usage.

17.4 If Form C1 is not obtained and completed, the foreign currency usage in respect of such goods may be deemed to be the price at which such goods were purchased.

18. Who should declare foreign currency usage and when

Specified motor vehicle manufacturers, component manufacturers and component and material suppliers to the motor vehicle industry must declare the foreign currency usage in respect of each type of component received during a quarter.

19. How is the foreign currency usage calculated

19.1 The foreign currency usage of specified motor vehicle manufactures must be determined using the method and basis of calculation as set out by ITAC in the APDP Info Doc.

19.2 ITAC has the right to verify the correctness of the foreign currency usage declared by manufacturers of eligible products by, amongst others, verifying Form C1s and related documents. Discrepancies detected by ITAC will be dealt with as provided for in the APDP Info Doc.

19.3 Values must be entered in Rand (ZAR) and may not be expressed as a percentage or as a foreign currency.

Part E – Calculation of the CSP for VAA purposes

20. What is the CSP and how is it calculated

20.1 In terms of Note 6.3(iii) to Rebate Item 317.03 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 VAA.

20.2 The CSP is:

20.2.1 in the case of vehicles built for the local market, the difference between the recommended retail list price ("RRLP") and the dealer's invoice price, plus market related expenditure, expressed as a percentage of the RRLP; or

20.2.2 in the case of vehicles exported, the market related expenditure expressed as a percentage of the dealer's invoice price (selling or invoice price by the OEM).

20.3 In terms of Note 6.3(b)(iii) to Rebate Item 317.03 of Schedule 3 to the Customs Act, the CSP will be calculated by ITAC as provided for in the APDP Info Doc. ITAC will provide the calculated percentage to SARS, which will apply the percentage to determine the VAA for each registered light motor vehicle manufacturer.

21. Who qualifies for a CSP

21.1 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 50 000 units measured over the most recent four quarter total.

21.2 In the event that a registered light motor vehicle manufacturer fails to achieve the required 50 000 production total and ITAC is of the opinion that it will not achieve this total in future, ITAC will deregister it for VAA purposes.

21.3 A motor vehicle manufacturer that was deregistered in terms of section 21.2 will be allowed to apply to be registered as a "new entrant" should it wish to re-apply for a future VAA.

21.4 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 the APDP Info Doc, 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".

21.5 Motor vehicle manufacturers that are new entrants must submit an application to ITAC in the manner and form as required in the APDP Info Doc, indicating that, amongst other, they have the capacity and ability to manufacture 12 500 vehicles per quarter. In the event that the motor vehicle manufacturer does not achieve the quarterly volume targets as set out in its business plan, ITAC may deregister the motor vehicle manufacturer for purposes of the VAA.

21.6 Notwithstanding section 21.5, if motor vehicle manufacturers that are new entrants do not achieve the quarterly volume targets as set out in the APDP Info Doc, ITAC will deregister the motor vehicle manufacturer for purposes of the VAA.

21.7 Motor vehicle manufacturers that manufacture only battery powered vehicles must achieve a most recent four quarter production total of 20 000 units.

21.8 In the event that a registered light motor vehicle manufacturer fails to achieve the required production total of 20 000 units referred to in section 21.7 above, and if the registered light motor vehicle manufacturer is of the opinion that it will not achieve it in future, ITAC will deregister it for VAA purposes.

22. How is the VAA used

In terms of Note 6.4 to Rebate Item 317.03 of Schedule 3 to the Customs Act:

22.1 The VAA 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 foreign currency usage of original equipment components received from any person in the SACU region.

22.2 Any surplus VAA 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 vehicles imported by the registered light motor vehicle manufacturer.

22.3 Should a registered light motor vehicle manufacturer use the excess VAA in a quarter to rebate duties on vehicles imported, SARS will reduce the value of the VAA by 20%.

Part F – Transitional Notes

23. Quarterly Customs account and other matters

23.1 The following will apply to the quarterly Customs account, applicable to OEMs, and other Customs matters: