

REPORT NO. 721

REVIEW OF REBATE ITEM 460.11/00.00/01.00

The International Trade Administration Commission of South Africa herewith presents
Report No. 721: Review of rebate item 460.11/00.00/01.00



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AYABONGA CAWE
CHIEF COMMISSIONER

PRETORIA

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GLOSSARY – LIST OF ACRONYMS

Acronym	Description
AfCFTA	African Continental Free Trade Area
EFTA	European Free Trade Agreement
EU	European Union
FOB	Free-On-Board
GATT	General Agreement on Tariffs and Trade
ITAC	The International Trade Administration Commission of South Africa
Mercosur	Common Market of the South
R-CTFL	Retail, Clothing, Textiles, Leather and Footwear
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARS	South African Revenue Service
Stats SA	Statistics South Africa
The Directive	Policy Directive
The dtic	The Department of Trade, Industry and Competition
The Minister	The Minister of Trade, Industry and Competition
WTO	World Trade Organisation

REPUBLIC OF SOUTH AFRICA
INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF
SOUTH AFRICA

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Synopsis

The International Trade Administration Commission of South Africa (the “Commission” or “ITAC”) received a policy directive (the “Directive”) from the Minister of Trade, Industry and Competition (the “Minister”) to review rebate item 460.11/00.00/01.00 (“used overcoat rebate”) as part of the implementation of the Retail-Clothing, Textile, Footwear, Leather (“R-CTFL”) Masterplan, where one of the Four Key Action Points under Commitment 4 of the R-CTFL Masterplan, is to review the rebate provision with regard to the importation of second-hand clothing. The Directive was also based on concerns which were raised by the Intergovernmental Illicit Economy Trade Task Team, about the potential abuse and/or misuse of the aforementioned rebate item, its contribution to illicit trade and the detrimental and negative effect the rebate may have on the domestic clothing and textile industry and the fact that the used overcoat rebate has not been reviewed for an extended period of time.

During its deliberations and in arriving at its recommendation, the Commission considered the information at its disposal, including comments received during the investigation period as well as oral representations.

The Commission found that:

- (a) Rebate item 460.11/00.00/01.00 has been in existence since the early 1990s. Despite many attempts by ITAC, SARS and industry to design better conditions and safeguards for this rebate over the years, and efforts by ITAC and SARS to monitor this rebate, it

continues to be abused and mis-used by some firms.

- (b) From an industrial policy point of view, the risk is that second-hand clothing (and perhaps even new clothing) finds its way into the South African market, using this rebate item, which has a detrimental effect on the local CTFL manufacturing and retail sectors. Furthermore, illegal imports of second-hand and worn clothing also threaten to undermine the objectives of the R-CTFL Masterplan and the nearly 70 000 new manufacturing jobs which the plan hopes to create. Such illegal imports put massive pressure on manufacturers and jobs by distorting prices to levels against which legitimate manufacturers cannot compete.
- (c) From an administrative point of view, the used overcoat rebate creates an administrative burden for SARS and ITAC as the goods are imported in compressed bales, making it very difficult to verify what type of products are actually imported. For instance, the outer part of the bales may contain used overcoats but other clothing is hidden in the middle. Even if the illicit goods are detained or seized by Customs, the only inevitable result is storage costs. Should the used overcoat rebate be maintained, SARS proposes additional control measures such as having the importer's code printed on outer bales on all sides.
- (d) In terms of the used overcoat rebate regarding the BELN countries, import statistics obtained from SARS show that these countries do not import a significant volume of used overcoats. On average, Lesotho imports about 250 000kg per year, followed by Botswana (25 000kg), Eswatini (3 000kg) and Namibia (1 500kg).
- (e) Information at the Commission's disposal indicated that there is a disparity and mismatch in the level of imports of worn clothing under tariff heading 63.09 recorded by SARS into South Africa and exports from foreign suppliers. Imports of second-hand clothing recorded by SARS are significantly higher than exports of second-hand clothing recorded by foreign suppliers, thus corroborating comments from stakeholders that the used overcoat rebate is possibly being used as a conduit to import other types of clothing (including new clothing). This, together with other considerations, suggests that the costs associated with the used overcoat rebate may very well outweigh the associated benefits. The costs in this instance would be the negative impact on industrialisation and

jobs within the textile and clothing sectors as well as undermining the efforts and objectives of the R-CTFL Masterplan. On the other hand, withdrawing the rebate item could have a negative impact on the welfare of vulnerable consumers who cannot afford an overcoat during the winter season.

- (f) According to information from SACTWU, South Africa currently has existing *albeit* manufacturing capacity for the overcoats technically covered by this rebate (across a range of the products covered under this rebate). Based on a mini-survey of imported used overcoats, SACTWU found that raincoats tended to be the cheapest products retailing for between R60 and R350. Trench coats were the second cheapest category retailing for between R100 – R250. Three quarter coats retailed for between R100 – R350. Other coats ranged from around R200 - R450.
- (g) Information received from four local manufacturers, namely Durban Overall, Icebreaker General trading, Leo Garments and Kingsgate, indicates that South Africa has productive capacity to manufacture overcoats, raincoats, anoraks, three-quarter coats, trench coats, padded waistcoats and parkas. It is worth noting that the aggregated annual production capacity has been increasing between 2020 and 2023 by 23%, on average, over that period. The current aggregated production capacity as of 2023 is 694 500 units, up from 566 500 units in 2020. It should be noted that based on the current quota allocation of 3 836 376kg, local import demand translates to approximately 5.1 million units (if each bales weighs approximately 45kg and contains approximately 60 units). This, therefore, translates into a demand gap of approximately 4.4 million units of overcoats.
- (h) The R-CTFL Masterplan PMO supported the removal of the rebate facility, as it poses challenges in terms of increasing domestic industrialisation and job creation. The PMO proposed that ITAC and thedtic should create a process that will phase out the rebate in question; create stricter controls in the interim to prevent the abuse of the rebate; and ,lastly, there should be a process established in the R-CTFL industry to explore opportunities to industrialise and create jobs in the products covered by the rebate in question and other warm winter clothing. To that effect, the PMO further proposed that, at the level of the R-CTFL Masterplan, an additional ambition should be added under localization:

“to explore how to scale up domestic production of warm winter clothing broadly, including but not limited to overcoats and related products”. This would extend the definition to products beyond overcoats to other coats and jackets, jerseys and

cardigans, fleece, sweaters, etc.

- (i) In light of the fact that there may not be sufficient domestic production capacity to manufacture various types of overcoats, the Commission should therefore consider striking a balance between the costs (i.e. abuse and mis-use, negative impact of local textile and clothing industry) of maintaining the rebate over a prolonged period, and the benefits of phasing out the rebate item (i.e. incentive for local manufacturers to consider setting up production lines for overcoats and potential for job creation).

In light of the foregoing, the Commission recommended the following:

- (a) That rebate item 460.11/00.00/01.00 for used overcoats be maintained at a quota level of 3 836 376kg and that the validity period be limited to January – July as the original purpose of the rebate item was to provide affordable used overcoats during the winter season. It is further proposed that the rebate item be phased out over the next 3 years by reducing the quota by 10% annually, to allow the industry to re-purpose their operations over this period of time to avoid immediate job losses. However, the quota for importers with 20 000kg allocation would remain at the same level for the next 3 years until the end of the phase-out period and no new importers would be allowed during the phase-out period. This would be effective from the date of implementation by SARS in the Customs and Excise Act, No.91 of 1964, through a publication in the Government Gazette;
- (b) That, should it be established towards the end of the phase-out period that the local manufacturers have not increased production of overcoats, including substitutable and similar warm winter clothing to replace imports, and the need for used overcoats has increased, the Commission may consider withdrawing the termination of the rebate item. However, this would be contingent on stricter measures to curb customs fraud and abuse of the rebate. The reintroduction of the rebate item would be such that the industry quota would be at the same level when the phase-out ended;
- (c) That the R-CTFL Masterplan should include under localization objectives exploring how to scale up domestic production of warm winter clothing broadly, including but not limited to, overcoats and related products. This would extend the definition to products beyond overcoats to other coats and jackets, jerseys and cardigans, fleece, sweaters, etc.; and
- (d) That the proposed amended guidelines, rules and conditions for rebate item 460.11/00.00/01.00, which would be applicable during the phasing out period, be published in the Government Gazette.

2. BACKGROUND

Directive to review rebate item 460.11/00.00/01.00 (“used overcoat rebate”)

- 2.1. The Minister of Trade, Industry and Competition (from here on referred to as the “Minister”) directed the International Trade Administration Commission of South Africa (“the Commission” or “ITAC”) in terms of Section 16(1)(d)(i) of the International Trade Administration Act, 2002 (“the ITA Act”) to conduct a review of rebate item 460.11/00.00/01.00 (“used overcoat rebate”) to the Customs and Excise Act, No.91 of 1964 (“the Customs and Excise Act”).
- 2.2. As indicated by the Minister, this Directive followed concerns, which were raised by the Intergovernmental Illicit Economy Trade Task Team, about the potential abuse and/or misuse of the aforementioned rebate item, its contribution to illicit trade and the detrimental effect this may have on the domestic clothing and textile industry. It was further considered that the used overcoat rebate has not recently been reviewed.
- 2.3. In addition, one of the Four Key Action Points under Commitment 4 of the Retail-Clothing, Textile, Footwear and Leather (R-CTFL) Masterplan, is to review the rebate provisions with regard to the importation of second-hand clothing.
- 2.4. **The Department of Trade, Industry and Competition (“the dtic”)** participates in the Intergovernmental Illicit Economy Trade Task Team together with ITAC, the South African Revenue Service (“SARS”) and National Treasury (“NT”). The Task Team focuses on practical actions to combat illicit trade in a range of products including metals, gold, tobacco, clothing, textiles and footwear.

3. REBATE ITEM - TARIFF POSITION & PRODUCT DESCRIPTION

- 3.1. Section 75 of the Customs and Excise Act, read with Schedules 3 and 4 (amongst others), provides that certain imported goods that are subject to customs duties may benefit from a rebate against those duties.
- 3.2. In terms of the Import Control Regulations, second-hand or used goods (including worn clothing) may not be imported except under an import permit issued in terms of section 6 of the ITA Act.

- 3.3. ITAC administers numerous rebate items, including the used overcoats rebate. Imports under this rebate item are subject to import control and rebate permits issued by ITAC.
- 3.4. The current tariff structure for worn clothing is depicted in Table 1 below. Used overcoats are classifiable under tariff subheading 6309.00.13. The tariff subheading currently attracts an ordinary customs duty of 60 per cent ad valorem or R25 per kilogram under General, European Union (“EU”), the European Free Trade Association (“EFTA”), the Southern African Development Community (“SADC”), Mercosur and the African Continental Free Trade Area (“AfCFTA”) columns.

Table 1: Current tariff position of used overcoats and worn clothing

Tariff heading	Tariff sub heading	Description	Statistical unit	Rate of duty					
				General	EU/UK	EFTA	SADC	Mercosur	AfCFTA
63.09	6309.00.13	Worn overcoats, car-coats, raincoats, anoraks, ski-jackets, dufflecoats, mantles, three-quarter coats, greatcoats, hooded caps, trench coats, gabardines, padded waistcoats and parkas	Kg	60% or 2500c/kg	60% or 2500c/kg	60% or 2500c/kg	60% or 2500c/kg	60% or 2500c/kg	60% or 2500c/kg

Source: SARS

- 3.5. The details of the rebate item under review is depicted in Table 2 below.

Table 2: Details of the rebate item under review

‘Used overcoats rebate’	
Rebate item	Rebate Item 460.11/00.00/01.00 in Schedule 4, Part 2 to the Customs and Excise Act, 1964
Implemented	Since 1993
Rebate detail	“Used overcoats, car-coats, raincoats, anoraks, ski-jackets, duffle-coats, mantles, three-quarter coats, greatcoats, hooded caps, trench coats, gabardines, padded waistcoats and parkas (excluding any other clothing articles) classifiable in tariff headings 61.01, 61.02, 62.01, 62.02 and 6309.00.13, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit”.
Product	Used overcoats, car-coats, raincoats, anoraks, ski-jackets, duffle-coats, mantles, three-quarter coats, greatcoats, hooded caps, trench coats, gabardines, padded waistcoats and parkas.

Purpose	To make imported used overcoats available to the poor and lower income consumers at affordable prices during the winter months.
Extent of Rebate	Partial rebate (30% of the full duty) of the current customs of 60% <i>ad valorem</i> or 2500c/kg NB: The rebate is subject to quantity control through a quota system.
Participation in rebate	In 2015, 63 firms participated under this rebate provision and were collectively allocated a total quota volume of 4 315 520 kg. In 2021, 57 firms participated under this rebate provision and the total quota volume declined to 3 276 631 kg.
Permit validity period	From date of issue until 31 December

Source: ITAC

4. POLICY CONSIDERATIONS

- 4.1. In terms of the relevant provisions of the ITA Act, the Commission has broad discretion to grant, amend, revoke or refuse an import permit. ITAC will generally not grant an import permit for second-hand or used goods, particularly for clothing. This is so because South Africa, as a general policy stance, is of the view that the importation of used goods should be limited. This is done to protect the domestic clothing manufacturing industry from an influx of imported, cheap second-hand clothing. It assists in preserving, stimulating and encouraging the expansion of the domestic industry, and preserving and creating much needed employment therein.
- 4.2. ITAC, accordingly, will generally not issue an import permit for the importation of second-hand clothing, except if it is for a specific and circumscribed purpose that the executive arm of Government has carved out (in terms of the rebate) and if the facts considered by ITAC support the issuing of a such a permit.

5. PERMIT CONDITIONS AND EVIDENCE OF MISUSE AND/OR ABUSE

- 5.1. Where goods are subject to import control and are to be imported under rebate, ITAC requires that a rebate permit be sought first and thereafter an import permit. ITAC spends a considerable amount of time, energy and resources investigating whether a particular applicant qualifies for a rebate permit and, if so, on what terms and conditions.
- 5.2. Rebate and import permits are only issued for a limited duration (12 months or

less), so that an importer is required to submit regular applications for the rebate and, on each occasion, to satisfy ITAC that granting the rebate would achieve the objective of the rebate at that point in time. During this process, applicants who received previous rebate permits also have to demonstrate their compliance with all of the Customs and Excise Act rules, guidelines and permit conditions. In other words, the applicant must demonstrate that its previous permit was used strictly for the purpose for which it was granted.

- 5.3. The used overcoat rebate is subject to conditions to ensure that its objectives are achieved. One important condition is proper record keeping of imported goods. It requires permit holders to keep various verifiable records (such as import volumes, production and sales volumes etc.) to allow ITAC to monitor the use of the rebate item.
- 5.4. In order to ensure compliance with the permit conditions, ITAC conducts periodic verifications of permit holders. ITAC verifications, which were conducted during the period 2013-2018, with the aim of establishing the level of compliance of permit holders, have found that substandard recordkeeping is prevalent amongst holders of used overcoat permits.
- 5.5. Information obtained through verifications indicated that used overcoats are being sold not only to low-income consumers but also to middle- and higher-income consumers. This:
 - a) contravenes the permit conditions;
 - b) defeats the objective of the rebate item; and
 - c) threatens local production and thereby has the potential to displace employment in the local clothing manufacturing industry.
- 5.6. During verifications, ITAC also exposed transgressions involving the transfer of benefit of permits to persons or entities not named in the permits. These transfers appear to be part of a scheme by certain permit holders to, *inter alia*, obtain additional quota that otherwise might not have been allocated to them under the used overcoat rebate.
- 5.7. ITAC exposed additional misuse of permits during these verifications, such as –

a) **Miss-declaration of imported goods**

ITAC investigated numerous cases of miss-declaration where unsuitable worn or new clothing items were imported under the used overcoats rebate. Articles described as track suits, sweatshirts, denim, sleepwear, plain blouses, skirts and sweaters have also been found in imported consignments under this rebate item.

b) **Fronting/Misrepresentation**

In the case of the used overcoats rebate, which is subject to a quota, ITAC uncovered a fronting scheme (designed to obtain excess quota) involving eight entities. ITAC rejected these applications and alerted **the dtic** to take further action.

c) **Fraudulent documentation**

ITAC found that applicants have submitted false information, including fake Visas and identity documents and forged **the dtic** emails, to obtain permits under the used overcoats rebate. Forged permits have also been submitted to SARS to clear consignments of worn clothing.

5.8. As a result of these transgressions under the used overcoat rebate, ITAC declined to grant permits to applicants who committed the transgressions and who had previously been accorded permits. As a result, the number of participants under the used overcoat rebate declined from 62 in 2010 to 57 in 2021.

6. **MARKET AND TRADE ANALYSIS**

6.1. In 2023, 67 firms participated under the used overcoat rebate provision and the total import volume amounted to 3 437 123 kg to the value of R56.3 million and at an average F.O.B price of R16.40/kg. The top five (5) importers under the used overcoat rebate accounted for 54% of total import volume at an average import price of R21/kg.

6.2. Further analysis of import data showed that the majority of imports of used overcoats originate from the EU, accounting for over 89%, on average, of total

imports in 2023.

- 6.3. There are an industry manufacturing overcoats for men, boys, ladies and girls in the Southern African Customs Union (“SACU”), with most of these manufacturers based in South Africa. However, the ability of manufacturers in the SACU to manufacture new overcoats at low cost is limited due to, amongst others, the short winter season in Southern Africa.

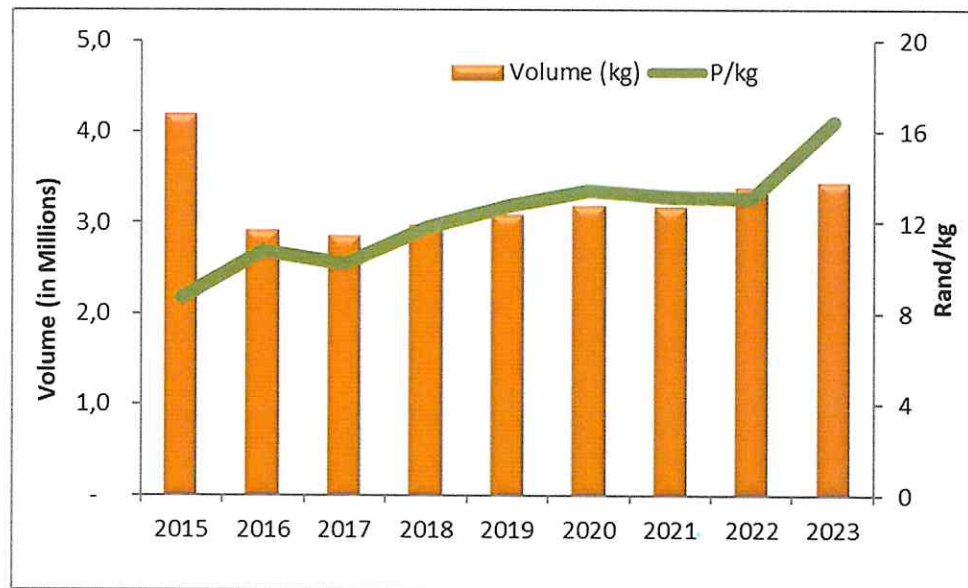
7. IMPORT DYNAMICS

7.1. Used overcoats

- a) This subsection looks at the trends in imports of used overcoats over the period 2015-2023. The importation of used overcoats in terms of the used overcoat rebate is subject to a quota system. In 2015, the Commission approved a total industry quota allocation of 4 680 746kg, of which 4 480 746kg was for existing importers and 200 000kg for new/first time importers. The approved quota allocation was to be in force for 5 years.
- b) Figure 1 below indicated that imports of used overcoats declined by 1 267 079 kg between 2015 and 2016. This was largely due to the fact that 11 rebate participants were declined rebate permits as they had breached rebate permit conditions. From 2016 onwards, imports have increased steadily as five (5) new importers were admitted, each with a quota allocation of 20 000kg annually.
- c) Imports generally originated mainly from EU countries (Germany, the Netherlands, Italy and Belgium), which accounts for approximately 89%, on average, of total import volumes.
- d) The used overcoat rebate offers a partial rebate (30% of the full duty) of the current customs duty of 60% *ad valorem* or 2500c/kg. As such, the customs duty paid by importers using the rebate facility over period 2023 amounted to R16.9 million while Value Added Tax (“VAT”) amounted to R11.8 million.
- e) In terms of affordability, the figure below indicated that Free on Board (“FOB”) prices have been trending upwards since 2017, with prices increasing by an average of 52.7% between 2017 and 2023 (i.e. from R10.74/kg to R16.40/kg).

This may partly be attributable to a weaker Rand/Dollar exchange rate over the period concerned.

Figure 1: Import trends of used overcoats



Source: SARS Trade Statistics

7.2. Import statistics indicated an anomaly in the volume of imports of worn clothing under tariff heading 63.09 as recorded by SARS compared to the volume of exports from foreign suppliers. According to trade statistics obtained from SARS, South Africa imported 5 400 521 kg worth of worn clothing from Pakistan in 2020. However, trade data from TradeMap indicates that Pakistan only exported 900 000 kg to South Africa. Similarly, SARS statistics shows that South Africa imported 1 220 753 kg from the USA, while TradeMap data shows that the USA only exported 264 000 kg in 2020. With respect to the UAE, SARS data shows that South Africa imported 2 594 903 kg, while TradeMap indicates that the UAE did not export any worn clothing to South Africa.

8. COMMENTS RECEIVED: INITIAL PUBLICATION

8.1. ITAC developed a questionnaire to solicit input and data from interested parties on, *inter alia*, pricing, volume of imports, production and sales, as well as customer lists, employment and investment. This data was requested in order to understand, amongst others, the demand and supply conditions in the market and the financial

position of the industry.

- 8.2. Requests for comments were sent to 50 firms participating under rebate item 460.11/00.00/01.00.

COMMENTS RECEIVED FROM USED OVERCOATS REBATE USERS

- 8.3. Comments were received from the Association of Importers of Worn Overcoats-South Africa, as well as 9 firms that utilise the used overcoat rebate, namely:

- a) Badibowa Construction;
- b) International Coat Importers and Distributors (Pty) Ltd (Coat King Importers);
- c) Overcoat Importer (Pty) Ltd;
- d) Sawadogo General Trading CC;
- e) K and T Wholesaler Clothing Enterprises;
- f) Park Wholesalers CC;
- g) Dahl Dealers CC;
- h) Calaska Trading 29 (Pty) Ltd; and
- i) Embelle Distributors CC.

- 8.4. Comments in objection to the review of the used overcoat rebate were received from the **Association of Importers of Worn Overcoats-South Africa**, stating that during the past 10 years, existing importers have been completely side-lined by not being eligible to receive an increase in the level of quota allocated to each importer. The association further stated that the current state of emergency has led to an increase in the level of unemployment. This is attributed to many companies being unable to keep trading during the pandemic. It was submitted that an increase in the rebate quota would enable many small, medium and micro enterprises, who deliver throughout the country, to sustain incomes for themselves and their employees. The association elaborated that the restrictions placed on existing importers of used overcoats hampers supply to the above-mentioned enterprises as importers are unable to supply sufficient quantities which in turn results in the entrepreneur's inability to uplift themselves and their community. The association suggested a twenty percent once off increase for all importers for a

period of five years (2022-2027), where the increase would be granted to all importers who apply for such. The association indicated that this five-year period is essential for the association members to be able to adequately plan for the future, as well as recover from the impact of the COVID-19 pandemic.

- 8.5. **Badibowa Construction and Projects CC** objected to the review, indicating that the removal of the used overcoat rebate would lead to job losses and an increase in the level of poverty.
- 8.6. **Coat King Importers** objected to the review, indicating that the depreciating Rand affects not only the cost of goods paid in Euro but also that of inland freight; shipping costs, which are in US Dollar, as well as increasing costs of running a business. Coat King Importers further made a request that the quota allocation of 2011 be revisited. Coat King Importers expressed the view that this allocation would assist the business to stay operational, as well as enabling an increase in the levels of employment.
- 8.7. **Overcoat Importer (Pty) Ltd** objected to the review, indicating the used overcoat rebate's ability to encourage and support entrepreneurs is already limited due to the current quota system and that the retention thereof would assist businesses and those who have lost their jobs due to the pandemic to rebuild or start a new venture. The Overcoat Importer further indicated that the used overcoat rebate provision provides the unemployed with the ability to become entrepreneurs, thus uplifting themselves and their communities out of poverty. The Overcoat Importer also supported the association's request for a five-year period, twenty percent increase in allocation, with no additional permits being requested during that period.
- 8.8. **Sawadogo General Trading CC** objected to the review on the grounds that the used overcoat rebate provision creates numerous indirect jobs as many of their clients purchase the overcoats for purposes of re-selling them.
- 8.9. **K and T Wholesaler Clothing Enterprises** indicated that it has been difficult without the ten percent increase in the annual allocated quota level, which used to be implemented ten years ago. Currently, supply to their hawkers and those wanting to enter the market have been greatly impacted as demand for used

overcoats have increased but supply is limited due to the current quota system. K and T Wholesaler Clothing Enterprises, as members of the Association of Importers of Worn Overcoats- South Africa, also expressed their support for a five-year period and a twenty percent, increase in allocation.

- 8.10. **Park Wholesalers CC** expressed their objection to the review, stating that, there are none or very few coat factories in South Africa. It was submitted that the very low price of imported used overcoats is great value for money. Park Wholesalers indicated that their customers buy the used overcoats in bales and are able to generate a profit which allows them to purchase two or more bales and create employment for others in their communities.
- 8.11. **Dahl Dealers CC** objected to the review and expressed their support for the association's recommendation of a five-year period and a twenty percent increase in allocation.
- 8.12. **Calaska Trading 29 (Pty) Ltd** ("Calaska") submitted that it is both in support of and objection to the review. The nature of Calaska's business is the importation of good quality second-hand civilian coats and jackets as well as surplus military gear, and offering it to less fortunate consumers and informal traders. Calaska submitted that its support for the review is in line with the fact that it will reduce smuggling and illicit trade within the industry caused by traders who are new to the business and do not adhere to the rules and regulations. As such, by limiting the rebate item to importers and traders, who have for many years adhered to rules and regulations, will assist bona fide firms to trade in a space that is fair and legal.
- 8.13. In its objection, Calaska submitted that the review would jeopardize decades of hard work, honest trading and generational support to employees. It further added that it would be unfair to penalize bona fide importers as result of fly-by-night illicit traders and smugglers. Calaska further submitted that there would be a loss of jobs should the rebate be withdrawn and requested rather that the quota allocation be increased significantly.
- 8.14. **Embelle Distributors CC** ("Embelle") submitted that it has been in the business of importing used overcoats for the past 32 years in the Eastern Cape, and have a permanent employees and employ casual workers during their busiest times.

Embelle submitted that it opposes the review as its business will not be viable without the rebate provision. Embelle requested that the quota allocation be increased by 30 per cent as this will allow it to be in a better position to negotiate better prices with foreign suppliers. Furthermore, Embelle submitted that it does not believe the importation of used overcoats is hurting the local clothing industry.

COMMENTS FROM OTHER STAKEHOLDERS

- 8.15. Comments were also received from the industry stakeholders, namely: the **Southern African Clothing & Textile Workers' Union ("SACTWU")**, the Textile Federation of South Africa ("**Texfed**"), and the Apparel Manufacturers of South Africa ("**AMSA**").

COMMENTS FROM SACTWU

- 8.16. SACTWU represents workers in the clothing, textile and leather sectors nationally. It was submitted that these are important labour intensive sectors in the South African economy, employing large numbers of people – the majority of whom are women, and often sole breadwinners located in impoverished parts of the country.
- 8.17. SACTWU submitted that it has a history of participating in previous reviews and amendments of the subject rebate item and has had concerns for many years. SACTWU remains concerned due to suspected high levels of abuse of this rebate and, given these problems and its disastrous impact on industrialisation and jobs, submitted that the rebate item must be withdrawn.
- 8.18. In its motivation, SACTWU submitted that, at a high level, the kinds of abuse which are likely to occur with imports under this rebate item includes, at a minimum, the following:
- (a) Many garments imported under the used overcoats rebate item 460.11/00.00/01.00 are not second-hand overcoats and winter jackets used for poverty relief purposes, but include other non-rebated second-hand winter clothing, all other kinds of second-hand clothing, and even new clothing, which are sold into the informal and formal wholesale and retail markets.

- 8.19. SACTWU further submitted that its members regularly and continuously complain about the ubiquitous sale of second-hand clothing into the market, not only overcoats. Such clothing is openly and widely sold in informal settings like street corners, roadsides and informal markets across the length and breadth of the country, and even in more formal settings like stores and online. It was submitted that, for instance, it is an open secret that all manner of second-hand clothing is sold in vast quantities on the streets of Johannesburg central and Marabastad. At various times the industry has complained to SARS about these markets but they continue unabated.
- 8.20. SACTWU submitted that the illegal trade of second-hand clothing has even mushroomed online, on sites like Facebook, Instagram and Gumtree where businesses advertise the sale of bales of imported second hand clothing which are not limited to overcoats. The following examples were mentioned:
- (a) A vendor on Facebook, which calls itself 'Imported Bales', openly offers consumers a vast array of other clothing such as men's t-shirts, ladies t-shirts, children's t-shirts, shirts, hoodies, socks, belts, dresses, blouses, skirts, shorts, tracksuits, leggings, jeans, underwear and footwear which it claims are second-hand clothing imported from places like Canada, Lithuania, the UK, Italy, and Belgium.
 - (b) Large numbers of other vendors of second-hand clothing beyond overcoats can be easily found on Facebook Marketplace. In some cases, the imported second-hand bales have even been sorted so that re-sellers can specialise in re-selling particular brands like H&M, Zara, Cotton On, and Mango.
- 8.21. SACTWU indicated that customs fraud is rife, and that rebate item 460.11/00.00/01.00 has been abused through mis-declaration, under-invoicing or smuggling to allow second hand clothing or even new clothing to be imported under this rebate code, despite the protection which ITAC has tried to create. It further submitted that SARS is well aware of this problem. Amongst many other cases, is the detention of several dozen containers of second-hand clothing in KwaZulu

Natal, and the fact that SARS has also been confronted with second hand clothing imported from the USA, which was misclassified as new clothing.

8.22. According to SACTWU, ITAC itself has recognised this fact in relation to the used overcoats rebate, and identified the following trends in the use thereof:

- (a) Confusion regarding the definition of products that can be imported in terms of the rebate;
- (b) Related articles being imported in terms of this rebate that were not included in the description of the rebate (such as jackets, wind-breakers and similar items); and
- (c) Other non-related types of clothing were being unlawfully imported in the bales containing used coats (including trousers, shirts, dresses, etc.).

8.23. According to SACTWU, illegal CTFL imports put untenable strain on the local CTFL manufacturing industry and jobs. These illegal imports also threaten to undermine the R-CTFL Masterplan and the nearly 70 000 new manufacturing jobs which the plan hopes to create. SACTWU submitted that such illegal imports put massive pressure on manufacturers and jobs by distorting prices to levels against which legitimate manufacturers cannot compete. But this problem is even more acute with illegally imported worn and used clothing because the price of such clothing is a fraction of the price of newly manufactured goods.

8.24. SACTWU concluded that despite many attempts by ITAC, SARS and industry to design better conditions for this rebate item over the years, and by ITAC and SARS to monitor this rebate item, it is clear that it continues to be abused. Therefore, it does not believe it will be possible to design new and better conditions to finally resolve these problems. It submitted that it is not possible for local manufacturers to compete against illegally imported second hand clothing or illegally imported new clothing that is smuggled into South Africa through second hand or worn clothing rebate provisions. The sale of such clothing into a market is a deadly virus for a diverse CTFL manufacturing industry and its jobs: it erodes domestic clothing and textile manufacturing capacities and capabilities and ultimately leads to massive job losses.

COMMENTS FROM AMSA

- 8.25. AMSA is a national Federation of regional employer associations. It represents 10 700 employees and 141 companies all of which are adversely affected by the abuse of this rebate item. In light of the abuse occurring under this rebate item, it was submitted that it should be discontinued.
- 8.26. AMSA submitted that this rebate item has been abused and used as a conduit for the duty-free importation of new clothing. It has also resulted in the demise of the overcoat manufacturing industry in South Africa and in general production is now focused on anoraks, windcheaters, denim jackets, rainwear, and similar products. These market segments have also been experiencing severe price pressure against imports of used overcoats, etc. undermining price points in the various market segments.
- 8.27. AMSA further submitted that the used overcoat rebate facility has been problematic for many years and despite attempts by ITAC to not incorporate additional users into the permit quota pool, it has resulted in a proliferation of these items in the hawker markets without the real social benefit being passed on to the destitute and less privileged.

COMMENTS FROM TEXTFED

- 8.28. Textfed submitted that the subject rebate item must be withdrawn in light of the misuse and mis-declaration associated with it.
- 8.29. Textfed indicated that it is important to note the origin of the items imported under tariff subheading 6309.00.13. In most cases the garments originate as discarded clothing items from developed economies, i.e. EU and the USA.
- 8.30. Textfed also submitted that, in terms of prices, on average, 347 000 kg of used overcoats and other coats was imported monthly at an average price of R13.14/kg for the period January-September 2021.

9. RE-PUBLICATION - COMMENTS RECEIVED

- 9.1. During the re-publication period, comments were received from several participating firms under the used overcoat rebate.
- 9.2. During the re-publication, comments were requested from most, if not all the companies which participate as beneficiaries of rebate item 460.11. However, only the following parties provided comment: Moon and Earth; Overcoat Importer; Association of Importers of Worn Overcoats- South Africa; Bagate Trading (Pty) Ltd; Overcoat Importer (Pty) Ltd; Ghual Business Support Services; Tshekuza Enterprise (Pty) Ltd, Kgotello Projects (Pty) Ltd, Dahl Dealers, Calaska Trading 29 (Pty) Ltd
- 9.3. Comments in support of the review were received from **Moon and Earth**, indicating that their support is solely based on the hope that there will be a subsequent increase in the quota, as that will help with job creation. Moon and Earth further indicated the role the rebate provision has played in the creation of jobs throughout the value chain, from the import transaction to the buyers who buy the bales and sell them off.
- 9.4. Comments objecting to the review were received from **Brider and Associates Attorneys at Law, on behalf of the Overcoat Importer Pty (Ltd)**. Brider and Associates Attorneys at Law indicated that the withdrawal of the rebate item 460.11/00.00/01.00 will result in a massive, immediate, damaging financial impact on the company, the company's stakeholders, and the used overcoat industry. The withdrawal of rebate item 460.11/00.00/01.00 will result in the elimination of the supply of overcoats to vulnerable consumers. It was further submitted that the withdrawal of rebate item 460.11/00.00/01.00 has no rational, discernible relationship to the stated objectives of preventing illicit trade, misuse of the rebate provision through mis-declaration, under-invoicing or smuggling and the detrimental and negative effect this may have on the domestic clothing and textile industry.

- 9.5. Brider and Associates Attorneys at Law further stated that the Intergovernmental Illicit Economy Trade Task Team unlawfully mis-apply an important economic policy incentive, with little discernible reduction in the illicit economy. Furthermore, Brider and Associates submitted that the withdrawal of the rebate item would disproportionately affect vulnerable consumers. The company sells overcoats on the retail level and sells bales to micro entrepreneurs. The company embarked on a comparative shopping exercise in respect of the retail market. The high level view is that new, comparable overcoats are sold at retail outlets, in this case all located at the East Rand Mall, Boksburg, Ekurhuleni at significant cost multiples. Across the sample that the company selected of the comparative shopping exercise, the overcoat costs the consumer 20 (twenty) times more if new and purchased from a local retail outlet.
- 9.6. Brider and Associates Attorneys at Law further stated that the further submitted that the withdrawal of the rebate item will force the company to close its doors and retrench its entire staff. In the turmoil of burgeoning unemployment and a stubbornly high dependency ratio, the economic impact of the Company's failure would be devastating.
- 9.7. Further comments were received from **BM Duchon Attorneys** on behalf of the Association of Importers of Worn Overcoats South Africa. It was submitted that, the association's members collectively have many years of experience within the worn overcoat industry, collectively in excess of more than 200 years. The members of the association employ substantial staff, with a network of employment being created across warehousing to wholesale, retail entities of varying shapes and sizes, to sizeable hawkers. The association expressed that one overlooked avenue within the overcoats industry is that of "add on value". Worn overcoats may require repair, dry cleaning, steam pressing and so forth. It is a forerunner to many sub-industries which it supports. The association further submitted that the worn overcoat industry is a great creator of employment within South Africa, contributing to the small and medium sized sector of the economy and even more so in the informal sector through the hawkers who purchase worn overcoats for resale. The worn overcoat industry thus generates its own formal employment within the country and is beneficial to the people of South Africa in that it provides worn

overcoats at very reasonable prices. The association further indicated that, with South Africa suffering from extraordinarily high unemployment rates, the removal of the rebate provision will further exacerbate the unemployment rate, at a time when South Africa can ill afford to lose a single job.

- 9.8. The association finally submitted that, it is the 'illicit trade' practice of allowing the importation of new clothing from the Far East at uncontrolled and unrealistic prices which has gone unchecked by **the dtic** and the Department [sic] of Customs and Excise for the past three decades that is the root cause of the detrimental and negative effects being experienced by the domestic clothing and textile industry and not the importation of worn overcoats, which is conducted under the controlled and regulated rebate item 460.11/00.00/01.00.
- 9.9. **Bagate Tradings** submitted comment in support of the continuation of the rebate provision, stating that they fully support and encourage the involvement of Black owned enterprises in the manufacturing industry as this helps alleviate poverty and inequality and creates job opportunities. The high unemployment rate makes it difficult for a middle class group to protect him/herself and dress warmly in winter. It was further expressed that the retention of the rebate provision will allow overcoat importers to continue providing overcoats at very affordable prices to the most disadvantaged people.
- 9.10. **Ghual Business Support Services** objected to the review and expressed that strict focus should be on the illegal trading of second-hand clothing at De Villiers Street in Johannesburg. It was also submitted that permits in terms of rebate item 460.11/00.00/01.00 should be issued to South Africans, as the South African Textile Industry is affected by imports from China which has led to the closure of textile factories, Edgars branches as well as massive job losses. It was reiterated that the main focus should be on terminating illegal trading of second-hand clothing taking place on De Villiers Street in Johannesburg, as this area is the main culprit that is destroying the textile industry.
- 9.11. **Tshekuza Enterprise (Pty) Ltd** objected to the review indicating that now is not the time to remove rebate item 460.11/00.00/01.00. However, the focus should be

on providing support to companies who are beneficiaries of the rebate item for the following reasons:

- (a) The rebate provision provides entrepreneurial opportunities and has supported direct and indirect creation of employment. The cancellation of the rebate item will result in loss of employment to many of our people.
- (b) The rebate item allows for ordinary South Africans to get winter clothes and protect themselves against the cold winter season at affordable prices. Retaining the rebate provision will continue to assist ordinary south Africans to afford winter coats and also allow many small importers who have been adversely affected by the Covid-19 pandemic time to grow and make progress in terms of creating employment.

9.12. **Park Wholesalers CC** objected to the withdrawal of rebate item 460.11/00.00/01.00. Park Wholesalers CC submitted that it has been importing used overcoats since 1969 and is an active member of the association of importers of worn overcoats South Africa. In their objection, Park Wholesalers cited, amongst others:

- a) Punishing legal and compliant companies will not stop illicit used clothing being smuggled via the ports, but rather more energy and resources should be allocated to controlling smuggling and corruption at the ports.
- b) The withdrawal of the rebate item will lead to job losses and exacerbate unemployment to tens of thousands of people who rely heavily on Park Wholesalers for an income.
- c) The government will be shooting itself in the foot as tax and customs duty revenue will be foregone.
- d) Smuggling is a reality; however, blaming everyone because of a few dishonest importers is unconstitutional.

9.13. Final comments in objection to the review were received from **Kgotello Projects (Pty) Ltd** stating that, rebate item 460.11/00.00/01.00 has played a role in the creation of both temporary and permanent jobs in small scale businesses (SMME's) and that the phasing out of the rebate provision would further impede

job creation and self-employment, which are vital for the economy. It was submitted that the rebate provision not only assists thousands of South Africans to put food on their tables by buying and selling winter overcoats at very affordable prices but also benefits the government in earning revenue in the form of Tax/Vat and other related charges which are applicable to the importation of used overcoats. Kgotello Projects further expressed that while a review is necessary, given the fact that there has not been one recently, they do however appeal to the Commission to consider increasing the quota from 20 000 kg to 40 000kg or 60 000 kg among the existing used overcoat permit holders.

- 9.14. Comments were also received from industry and associations, namely Texfed, Pepkor, Kingsgate, ATASA, AMSA and SAA-A.
- 9.15. Texfed supports the immediate removal of rebate item 460.11/00.00/01.00. It further submitted that it sees absolutely no reason for recommending a phased removal of the rebate provision as the rebate provision has been abused and have caused immense harm to the clothing and textile industries in South Africa and SACU.
- 9.16. Texfed indicated that there are literally bales of imported second-hand garments everywhere on the streets of South Africa. In a news clip on China City in Johannesburg, in the background one could witness hundreds of bales of second-hand clothing that were being sorted and just being put up for resale. Texfed submitted that these bales of second-hand clothing should be earmarked for shredding and being recycled as used fibre.
- 9.17. The **South African Apparel Association (“SAA-A”)** is the largest compliant employer association representing the trade and labour market interests of its members in the domestic clothing manufacturing sector. SAA-A submitted that there is widespread abuse of these two rebate items which pose serious risks to its members and most importantly to the job security of the many thousands of people in their employment.

- 9.18. SAA-A submitted that rebate item 460.11/00.00/01.00 (used overcoats) has not only been abused as a conduit for importing new clothing, but most importantly has led to serious damage to the domestic overcoat manufacturing sub-sector. Overall production has now shifted its focus to anoraks, rainwear, wind-breakers and related apparel products.
- 9.19. The **Apparel & Textile Association of South Africa** (ATASA), an employer organisation registered with the Department of Labour, representing 62 members with a total of 13 601 employees nationally in the clothing manufacturing and textile industry objected to the existence of the subject rebate provision. ATASA submitted that the abuse of the subject rebate provision results in these goods being underdeclared and a lot of goods make their way to retail shelves.
- 9.20. **AMSA** reiterated its comments which were provided in the initial publication phase.
- 9.21. **Pepkor** has the largest retail store footprint in Southern Africa with more than 5 470 stores of which approximately 3 000 provide affordable quality apparel (and other) products to millions of South African families. Pepkor supports the withdrawal of the used overcoat rebate provision.
- 9.22. **Kingsgate Clothing Group** (“Kingsgate”) which is a local manufacturer of various clothing items including jackets also supports the withdrawal of the rebate provision.

10. **Summary of oral presentations**

- 10.1. Oral representations were presented to the Commission by three interested parties, namely:
- (a) Brider & Associates Attorneys at Law on behalf of The Overcoat Importer (Pty) Ltd;
 - (b) BM Duchon Attorneys on behalf of Association of Importers of worn overcoats South Africa, including Park Wholesalers (Pty) Ltd; and
 - (c) KWP Law on behalf of Soviet *et al.*

10.2. Oral representations from the used overcoat participants centred around the following:

- a) Rebate participants under the used overcoat rebate objected to the withdrawal of the rebate provision and cited, amongst others, that the withdrawal of the rebate provision will result in a massive, immediate and damaging financial impact on the companies concerned. It was also argued that this will result in the elimination of the supply of overcoats to vulnerable consumers during the winter season.
- b) They further indicated that the rebate provision provides entrepreneurial opportunities and has supported direct and indirect employment. Furthermore, they fully support and encourage the involvement of Black owned enterprises in the manufacturing industry as this helps alleviate poverty and inequality. As such, it was submitted that the cancellation of the rebate item will result in the loss of employment. It was also contended that most of the rebate participants have been in existence for some time, with the likes of The Overcoat Importer (Pty) Ltd, which has been in existence for 27 years.

11. ADDITIONAL INFORMATION REQUESTED FROM THE INDUSTRY

11.1. Production capacity

- a) The Commission requested additional information from: AMSA, ATASA, Pepkor, SAA-A and Kingsgate, in order to ascertain the available local production capacity of overcoats. The Commission only received two sets of information from Pepkor and Kingsgate, with Pepkor indicating that they do not manufacture coats or any variations of overcoats. AMSA submitted that Camargue manufactures anoraks.
- b) Kingsgate submitted that its overcoats are supplied to independent retailers across Gauteng, Mpumalanga and Limpopo. In terms of future pricing, Kingsgate submitted that pricing will only be affected by raw material input costs, exchange rate and CPI increases.
- c) Durban Overall, is a manufacturer based in Ladysmith and manufactures general and specialized work wear and uniforms for a number of industries. In addition to that, it also manufactures raincoats and parkas.

- d) Icebreaker General Trading is a manufacturer based in East London, and does Branding, Embroidery and Uniforms. The company also manufactures personal protective clothing as well as overcoats and trench coats.
- e) Leo Garments is a fully black empowered company, based in Berea, Durban. The company is a primary manufacturer of Protective Overwear and Equipment.
- f) Based on the information received from the four local manufacturers, South Africa has productive capacity to manufacture overcoats, raincoats, anoraks, three-quarter coats, trench coats, padded waistcoats and parkas. It is worth noting that the aggregated annual production capacity has been increasing between 2020 and 2023, increasing by 23%, on average, over that period. The current aggregated production capacity, as of 2023, is 694 500 units, up from 566 500 units in 2020. It should be noted that, based on the current quota allocation of 3 836 376kg, local import demand translates to approximately 5.1 million units (assuming that each bale weighs approximately 45kg and contains approximately 60 units and no other items, such as new clothing). This, therefore, translates into a demand gap of approximately 4.4 million units of overcoats.
- g) The aggregate employment of these companies increased by 26% between 2020 and 2023, and current employment stands at 577, of which 190 is youth employment. Similarly, aggregated investment increased by almost 100% and currently stands at R23.6 million, up from R11.9 million in 2020.

11.2. **Additional comments from SACTWU**

- a) SACTWU submitted that South Africa currently has existing albeit limited manufacturing capacity for the overcoats which are technically covered by this rebate (across a range of the products covered under this rebate). This includes companies such as: K-Way, TCI Apparel, SH FQ, Prestige Clothing, FG Uniforms, Leo Garments, Gina of Charles Street, Dromex, Lux Clothing, Navada, and Performance Brands.
- b) In order to add value to ITAC's analysis of this rebate, SACTWU conducted a mini survey of stores which sell both used and new overcoats: it visited 11

- stores and viewed roughly 200 garments. The intention was to determine (i) the nature of the used overcoats being sold, (ii) the prices of those goods, (iii) any signals or signs of possible abuse of the rebate, and (vi) to understand some of the prospects and complexities that may face domestic CTFL manufacturers to produce these goods. [A key limitation of the survey is that there were relatively few overcoats in many formal retailers due to the current summer season].
- c) SACTWU visited several stores of the second-hand overcoat seller Coats for Africa. At Coats for Africa, SACTWU found a range of overcoats including three-quarter coats, carcoats, parkas, trench coats, and raincoats, amongst others. Raincoats tended to be the cheapest products retailing for between R60 and R350. Trench coats were the second cheapest category retailing for between R100 – R250. Three quarter coats retailed for between R100 – R350. Other coats ranged from around R200 - R450.
 - d) At Coats for Africa, there were also bales of second-hand garments (claimed to be overcoats) for sale in-store. SACTWU was informed that each bale includes 60 garments and costs R5 500 (roughly R90 per garment). These bales are apparently sold to resellers. [However, Coats for Africa is not the only retailer selling such bales, which are openly traded - for instance on the internet and social media – sometimes for prices as low as R1 500 per bale. It is not clear whether these other companies are rebate holders]. Given that Coats for Africa has already placed a margin on the goods it is selling, their import landed costs are very likely (significantly) below the price of raw materials needed to manufacture overcoats.
 - e) SACTWU supports the concept of phasing out the rebate in favour of developing local manufacturing capacity. However, this will be a complex process given the reality that second-hand goods can be priced significantly below the cost of raw materials, let alone manufacturing costs and retail prices.
 - f) However, SACTWU further submitted that it is not clear whether the problem represented by these kinds of traders (i.e. social media and other vendors of

used overcoats) will be solved by the proposed phase-out of the secondhand clothing rebate for overcoats. That would largely depend on whether these traders are current users of the existing rebates, or whether they are simply illicitly importing and selling goods. Key questions for SACTWU therefore to understand would be:

- whether they are registered as users of either of the two existing rebates;
- whether they comply with all the requirements set out for these rebates;
- whether their trade in essentially restricted products represents a breach of any duties or obligations.

g) The proposals from SACTWU are dealt with in more detail in the next section (i.e. Comments from the R-CTFL Masterplan Program Management Office (“PMO”). It should be noted that SACTWU has representation in the PMO which comprises of industry, labour and the retail sector.

11.3. **Comments from the R-CTFL Masterplan PMO**

11.3.1. The R-CTFL Masterplan PMO supported the removal of the rebate facility, as it poses real challenges for domestic industrialisation and job creation. The Masterplan PMO members aligned their comments with the proposals made by SACTWU and provided more practical clarity on some of the proposals made by SACTWU. The PMO proposed that ITAC and the DTIC should create a process that will phase out the rebate in question; create stricter controls in the interim to prevent the abuse of the rebate and lastly, there should be a process established in the R-CTFL industry to explore the opportunities to industrialise and create jobs in products covered by the rebate in question as well as supporting manufacturing of other warm winter clothing.

Three overall major challenges identified

The PMO outlined three major challenges that are posed by the rebate in question:

a) The rebate is abused through customs fraud in several ways. For instance, the rebate has opened a tariff-wall gap that allows importers to fraudulently mis-classify and import under rebate, products (both new and second-hand) which

are not covered by the rebate. It is also suspected that importers may be importing greater quantities of overcoats than they declare.

- b) Secondly, due to customs fraud and cheap imports they defy competition from the locally manufactured goods. This is a challenge for both overcoat and other clothing sectors.
- c) Lastly, the rebate in question does not serve its purpose of serving the poor working class, instead it also serves wealthier consumers.

11.3.2. For these reasons, amongst others, the PMO proposes the termination of this rebate, and this could be done as a multi-year phase-out. This would serve several purposes:

- (a) It would create a firm deadline to end this rebate;
- (b) It would provide some continued (though diminishing) access to products for legitimate poverty relief purposes;
- (c) It would enable the businesses using this rebate to have more time to explore and make alternative plans to repurpose their businesses and find new opportunities for their employees; and
- (d) It would also create space for government and the domestic R-CTFL industry to explore, build and scale up new alternatives.

Great Fraud Prevention

11.3.3. The PMO in their submission emphasized that, during the phase out period, better control measures should be put in place in order to avoid any abuse of the rebate, as this period might encourage more customs fraud, as fraudsters would continue to clear high volumes through misdeclaration in order to import more volumes before the rebate is phased out.

11.3.4. Therefore, the PMO proposed the following additional measures be implemented to control fraud and abuse of the rebate in question:

- (a) The annual publication by ITAC of the names of all rebate users, and the data associated with their usage and imported volumes during the phase-out period;

- (b) A dedicated focus by SARS on the specific importers which use and retail these products to analyse their transactions and commercial behavior); and
- (c) A requirement for additional audits to be conducted on the rebate users by independent third-party auditors to validate the legitimacy of the transactions and compliance with the rebate conditions.

Securing alternative supply of cheaper products

11.3.5. As part of the phase out, the PMO proposed the following:

- (a) There should be a determined effort to provide cheaper overcoat substitutes in the market without resorting to imported second-hand clothing.
- (b) The primary tool should be scaling up clothing banks: ensuring that national retailers explore if and how to deploy more excess merchandise, in particular excess overcoats, to supply impoverished citizens. It may be useful to explore if and how the enlargement of clothing banks could offset any job losses, which might occur in companies that currently sell second-hand overcoats imported under the rebate item concerned.
- (c) A secondary tool that could be considered, in exceptional circumstances, would be disaster-relief support of the same kind as provided by the R-CTFL industry to the victims of the KZN floods. During this social crisis, the R-CTFL industry and SARS worked collaboratively to distribute seized blankets, which had been illegally imported, to people who had lost their belongings in the disaster.

Exploring and Building Local Capacity

11.3.6. The PMO indicated that it is not fair and realistic to manufacture a finished product at a price equivalent to the imported products, which are priced below the cost of raw material. However, it may be possible to locally manufacture finished products, which meet the price-points of value retailers or which retail more cheaply.

11.3.7. The PMO was of the view that it is possible for the R-CTFL industry to commit to exploring opportunities to re-industrialise and create jobs in the products covered by the rebate in question as well as other warm winter clothing.

11.3.8. Therefore, the PMO proposed that, at the level of the R-CTFL Masterplan, an additional ambition should be added under localisation:

“to explore how to scale up domestic production of warm winter clothing broadly, including but not limited to overcoats and related products”. This would extend the definition to products beyond overcoats to other coats and jackets, jerseys and cardigans, fleece, sweaters, etc.

11.3.9. As part of a development strategy to build competitiveness in this sub-sector, allowing the industry to come into price and industrialise off-the back of these products, the PMO anticipated the following elements will have to be explored:

Measures to address the cost of raw material:

- a) How to reduce cost of raw material - if possible, this could be through the woven fabric rebate or anticipated yarn or knitted fabric rebates, there may be opportunities to explore local sourcing of such fabrics including non-woven fabrics;
- b) There may be opportunities to reduce cost further through allowing competition exemptions for bulk or collaborative buying modalities to achieve better prices and economies of scale;
- c) It may be possible that there are opportunities to develop cheaper inputs through the circular economy – in particular reprocessing of waste fabrics and clothing into new fabrics and components (insulation etc.) from which warm winter clothing can be produced;

Measures to address the cost of manufacturing:

- a) Seeking to reduce price by increasing manufacturing volumes through securing both domestic and international markets;
- b) Achieve cost reductions through targeting energy and waste efficiency; and
- c) Develop strategic incentives, including grants and subsidies, designed to rebuild missing capacity and competitiveness, in particular to increase efficiency through investment in technology and manufacturing processes.

Measures to address the cost of retail:

- a) Apart from ensuring that retailers better coordinate supply of such clothing to Taking Care of Business and other clothing banks, it may also be useful to consider the strategic use of VAT zero-rating for locally made overcoats; and
- b) Development of supply chain efficiencies to reduce costs.

12. A differentiated phase-out rate based on firm size

12.1. The Commission noted that participants under this rebate item vary by firm size. The industry is characterized by small to medium and large firms. In order to assess a suitable reduction model for the proposed phase-out period, it is important to understand the firm size dynamics within the industry.

- (a) Small firms are generally companies which have one member/owner, employ no permanent workers, employ not more than 2 casual workers and sell the imported bales of used overcoats directly to hawkers; rent a warehouse for the duration of the overcoats selling season; and sell imported bales of used overcoats directly to the public. This category of firms usually accounts for less than 1% of the total industry quota allocation and has a quota of 20 000kg per importer.
- (b) Medium sized firms are companies which have one member/owner, employ 1 to 6 permanent workers and more than 6 temporary workers and sell imported bales of used overcoats directly to the public (i.e. direct end consumers); rent a warehouse for the duration of the overcoats selling season and sell other goods besides overcoats (e.g. wiping rags and cleaning cloths). This category of firms usually accounts for less than 5% of the total industry quota allocation and has a quota that ranges from 30 000kg to 150 000kg per importer.
- (c) Large sized firms are companies that have 1 or 2 members/ owners who may own more than one company or are inter-related with other companies other than used overcoat companies; employ more than 6 permanent workers and more than 6 temporary workers; and invested in infrastructure, which includes warehouses and shops. Large firms will ordinarily open bales of used overcoats, do alterations, clean and then rail overcoats to be sold directly to the public (i.e. end consumers). They sell other products besides overcoats

(e.g. wiping rags and cleaning cloths and other clothing items). This category of firms usually accounts for less than 15% of the total industry quota allocation and has a quota that ranges from 151 000kg to close to 900 000kg per importer.

13. SUMMARY OF FINDINGS

- 13.1. Rebate item 460.11/00.00/01.00 has been in existence since the early 1990s. Despite many attempts by ITAC, SARS and industry to design better conditions and safeguards for this rebate over the years, and efforts by ITAC and SARS to monitor this rebate, it continues to be abused and mis-used by some firms.
- 13.2. Information at the Commission's disposal indicates that the used overcoat rebate item has been abused through mis-declaration, under-invoicing or smuggling to allow second-hand clothing or even new clothing to be imported under this rebate item. However, there are legitimate importers who are running bona fide businesses and are compliant with regulations and rebate permit conditions.
- 13.3. Information received from interested stakeholders suggests that many garments imported under rebate item 460.11/00.00/01.00 are not second-hand overcoats and winter jackets used for poverty alleviation purposes, but include other non-rebated second-hand winter clothing, all other kinds of second-hand clothing, and even new clothing, which are sold into the informal and formal wholesale and retail markets.
- 13.4. From an industrial policy point of view, the risk is that second-hand clothing (and perhaps even new clothing) finds its way into the South African market, using this rebate item, which has a detrimental effect on the local CTFL manufacturing and retail sectors. Furthermore, illegal imports of second-hand and worn clothing also threaten to undermine the objectives of the R-CTFL Masterplan and the nearly 70 000 new manufacturing jobs which the plan hopes to create. Such illegal imports put massive pressure on manufacturers and jobs by distorting prices to levels against which legitimate manufacturers cannot compete.

- 13.5. From an administrative point of view, the subject rebate item creates an administrative burden for SARS and ITAC as the goods are imported in compressed bales, making it very difficult to verify what type of products are imported. For instance, the outer part of the bales may contain used overcoats, but other clothing is hidden in the middle. Even if the illicit goods are detained or seized by Customs, the only inevitable result is storage costs. Should the used overcoat rebate be maintained, SARS proposes additional control measures such as having the importer's code printed on outer bales on all sides.
- 13.6. The Commission received a very limited number of comments from rebate participants during the initial publication phase. Comments were received from eight (8) used overcoat firms representing only 14% of the total industry firms participating under the used overcoat rebate. Comments received were largely in favour of maintaining the rebate item and increasing quota allocations.
- 13.7. Comments received from rebate participants under the used overcoat rebate during the second publication objected to the withdrawal of the rebate provision and cited, amongst others, that the withdrawal of the rebate provision will result in a massive, immediate and damaging financial impact on the companies. It was also argued that this will result in the elimination of the supply of overcoats to vulnerable consumers.
- 13.8. The importers of used overcoats cited that the rebate provision provides entrepreneurial opportunities and has supported direct and indirect creation of employment. Furthermore, they fully support and encourage the involvement of Black owned enterprises in the manufacturing industry as this helps alleviate poverty and inequality. As such, it was submitted that the cancellation of the rebate item will result in a loss of employment. It was also contended that most of the rebate participants have been in existence for some time, with the likes of the Overcoat Importer (Pty) Ltd in existence for 27 years and employing 127 people and Park Wholesalers importing used overcoats since 1969 and currently employing 60 people.

- 13.9. Given that the used overcoat rebate offers a partial rebate of duty, information at the Commission's disposal indicates that the average customs duty paid by the importers under the rebate facility during 2023 amounted to R16.9 million while VAT paid amounted to R11.8 million.
- 13.10. In terms of the used overcoat rebate regarding the BELN countries, import statistics obtained from SARS show that these countries do not import a significant volume of used overcoats. On average, Lesotho imports about 250 000kg per year, followed by Botswana (25 000kg), Eswatini (3 000kg) and Namibia (1 500kg).
- 13.11. Information at the Commission's disposal indicates that there is a disparity and mismatch in the level of imports of worn clothing under tariff heading 63.09 recorded by SARS into South Africa and exports from foreign suppliers. Imports of second-hand clothing recorded by SARS are significantly higher than exports of second-hand clothing recorded by foreign suppliers, thus corroborating comments from stakeholders that the subject rebate item is possibly being used as a conduit to import other types of clothing (including new clothing). This, together with other considerations, suggests that the costs associated with the subject rebate item may very well outweigh the associated benefits. The costs in this instance would be the negative impact on industrialisation and jobs within the textile and clothing sectors as well as undermining efforts and objectives of the R-CTFL Masterplan. On the other hand, withdrawing the rebate item could have a negative impact on the welfare of vulnerable consumers who cannot afford an overcoat during the winter season.
- 13.12. The Commission requested additional information from AMSA, ATASA, Pepkor, SAA-A and Kingsgate, in order to ascertain the available local production capacity of overcoats. The Commission only received two sets of information, namely from Pepkor and Kingsgate, with Pepkor indicating that they do not manufacture coats or any variations of overcoats. On the other hand, Kingsgate submitted that it only has production capacity to manufacture Anoraks (40 000 units) and 3-quarter coats (8 000 units).

- 13.13. According to information from SACTWU, South Africa currently has existing albeit limited manufacturing capacity for the overcoats technically covered by this rebate (across a range of the products covered under this rebate). Based on a mini-survey of imported used overcoats, SACTWU found that raincoats tended to be the cheapest products retailing for between R60 and R350. Trench coats were the second cheapest category retailing for between R100 – R250. Three quarter coats retailed for between R100 – R350. Other coats ranged from around R200 - R450.
- 13.14. Based on information received from four local manufacturers, namely Durban Overall, Icebreaker General trading, Leo Garments and Kingsgate, South Africa has productive capacity to manufacture overcoats, raincoats, anoraks, three-quarter coats, trench coats, padded waistcoats and parkas. It is worth noting that the aggregated annual production capacity has been increasing between 2020 and 2023 by 23%, on average, over that period. The current aggregated production capacity as of 2023 is 694 500 units, up from 566 500 units in 2020. It should be noted that based on the current quota allocation of 3 836 376kg, local import demand translates to approximately 5.1 million units (assuming that each bales weighs approximately 45kg and contains approximately 60 units). This, therefore, translates into a demand gap of approximately 4.4 million units of overcoats.
- 13.15. In terms of pricing, locally manufactured products range from R250 for padded waistcoats to R900 for raincoats.
- 13.16. The aggregate employment of these companies increased by 26% between 2020 and 2023, and current employment stands at 577, of which 190 is youth employment. Similarly, aggregated investment increased by almost 100% and currently stands at R23.6 million, up from R11.9 million in 2020.
- 13.17. The R-CTFL Masterplan PMO supported the removal of the rebate facility, as it poses challenges in terms of increasing domestic industrialisation and job creation. The PMO proposed that ITAC and the dtic should create a process that will phase out the rebate in question; create stricter controls in the interim to prevent the abuse of the rebate and lastly, there should be a process established in the R-CTFL industry to explore the opportunities to industrialise and create jobs in the

products covered by the rebate in question and other warm winter clothing. To that effect, the PMO further proposed that, at the level of the R-CTFL Masterplan, an additional ambition should be added under localization:

“to explore how to scale up domestic production of warm winter clothing broadly, including but not limited to overcoats and related products”. This would extend the definition to products beyond overcoats to other coats and jackets, jerseys and cardigans, fleece, sweaters, etc.

- 13.18. In light of the fact that there may not be sufficient domestic production capacity to manufacture various types of overcoats, the Commission considered the need to strike a balance between the costs (i.e. abuse and mis-use, negative impact on the local textile and clothing industry) of maintaining the rebate over a prolonged period, and the benefits of phasing out the rebate item (i.e. incentive for local manufacturers to consider setting up production lines for overcoats and potential for job creation).

14. RECOMMENDATION

- 14.1. In light of the forgoing, the Commission recommended the following:
- a) That rebate item 460.11/00.00/01.00 for used overcoats be maintained at a quota level of 3 836 376kg and the validity period be limited to January – July as the original purpose of the rebate item was to provide affordable used overcoats during the winter season. It is further proposed that the rebate item be phased out over the next 3 years by reducing the quota by 10% annually, to allow the industry to re-purpose their operations over this period of time to avoid immediate job losses. However, it is proposed that the quota for importers with 20 000kg allocation remain the same level for the next 3 years until the end of the phase-out period; and that no new importers be allowed to participate during the phase-out period. These changes to the overcoat rebate would become effective from the date of implementation by SARS in the Customs and Excise Act through a publication in the Government Gazette;

- b) That, should it be established towards the end of the phase-out period that the local manufacturers have not increased production of overcoats, including substitutable and similar warm winter clothing to replace imports, and the need for used overcoats has increased, the Commission may consider withdrawing the termination the rebate item. However, this would be contingent on stricter measures to curb customs fraud and abuse of the rebate. The reintroduction of the rebate would be such that the industry quota would be at the same level when the phase-out ended;

- c) That the R-CTFL Masterplan, should include under localization objectives exploring how to scale up domestic production of warm winter clothing broadly, including but not limited to overcoats and related products. This would extend the definition to products beyond overcoats to other coats and jackets, jerseys and cardigans, fleece, sweaters, etc.; and

- d) That the proposed amended guidelines, rules and conditions for rebate item 460.11/00.00/01.00, which would be applicable during the phasing out period, be confirmed through a publication in the *Government Gazette*.

ANNEXURE "B"

GUIDELINES, RULES AND CONDITIONS

GUIDELINES, RULES AND CONDITIONS PERTAINING TO PERMITS ISSUED UNDER REBATE ITEM 460.11/00.00/01.00 FOR USED OVERCOATS, CAR-COATS, RAINCOATS, ANORAKS, SKI-JACKETS, DUFFLE COATS, MANTLES, THREE-QUARTER COATS, GREATCOATS, HOODED CAPS, TRENCH COATS, GABARDINES, PADDED WAISTCOATS AND PARKAS (BUT NO OTHER CLOTHING ARTICLES) CLASSIFIABLE UNDER TARIFF HEADINGS 61.01, 61.02, 62.01, 62.02 AND 6309.00.13 IN SUCH QUANTITIES, AT SUCH TIMES AND SUBJECT TO SUCH CONDITIONS AS THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION MAY ALLOW BY SPECIFIC PERMIT.

NOTE: These guidelines, rules and conditions will be applicable during the phase out period of the rebate item, effective from the date of implementation by SARS in the Customs and Excise Act, No.91 of 1964 through a publication in the Government Gazette. No New importers will be allowed during the phase-out period.

1. Applications for rebate permits must be addressed to the International Trade Administration Commission of South Africa (ITAC), Private Bag X 753, Pretoria or delivered by hand to the DTI Campus, (Block E), 77 C/o Meintjies street and Robert Sobukwe Street, Sunnyside, Pretoria, 0002.
2. Applications for permits must be submitted according to the requirements laid down in the 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.
3. 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, and it will be returned to the applicant.
4. At least fourteen (14) working days should be allowed for the processing of applications and the issuing of permits.
5. Used overcoats are subject to Import Control conditions and an import permit will only be issued in instances where a rebate permit has already been obtained.
6. Each rebate permit issued defines the period during which the goods concerned can be cleared under rebate. The period shall be from the date when the permit is issued in the prevailing year until 31 July of the same year. This period shall apply to existing importers and shall be for a shorter period if so requested by the applicant or so decided by ITAC. Permits for the next period may be issued with effect from 01 January every year until 31 July, unless otherwise determined by ITAC. Where applications are not received in time for issuing from 01 January to 31 July, permits will be issued for the remainder of the year until 31 July.
7. Rebate and Import Control permits may not be transferred in any manner by the holder thereof to any other person or entity, or be used to the benefit of any person or entity not named in the permits.
8. Permit holders are not allowed to import used overcoats and then sell the imported coats directly to a person or entity which is owned by or who is owned by any related party, person or entity set out in Section 2 of the Companies Act.
9. Applications submitted in terms of this rebate provision will be subject to the following requirements:
 - 9.1 The applicant must provide a formal letter on business letterhead confirming that the applicant complies with labour laws, regulations and agreements gazetted by the Minister of Labour.

- 9.2. The applicant must provide, in each permit application, the number of jobs it expects to create annually as a result of the rebate. The applicant must submit to ITAC an annual report on its job creation performance.
- 9.3. Proof of UIF registration must be provided by submitting a certified copy of UIF registration. Furthermore, proof need to be provided that all the permanent workers employed as registered for UIF and that the UIF payments are made to SARS.
- 9.4. Proof must be provided that salaries are being paid (permanent as well as temporary workers) as well as certified copies of ID documents must be submitted. In this regard certified copies of salary slips need to be provided as well as certified proof of payment of these salaries.
- 9.5. Certified copies of bank statements need to be provided as proof of payment of UIF and salaries. Bank accounts must be in the name of the applicant.
- 9.6. Certified copies of employment contracts need to be provided as proof of employment of permanent employees.
- 9.7. The applicant must provide their Companies and Intellectual Property Commission (CIPC) registration document as proof of registration.
- 9.8. The applicant must submit a valid Tax Clearance and VAT Certificate (NB: VAT certificate (NB: VAT certificate only applicable based on annual turnover). In line with the VAT Act, applicants must be registered for VAT if the income earned in any consecutive twelve month period exceeded or is likely to exceed R1 million. In addition, an enterprise which has not made R50 000 in taxable supplies must register for VAT, if there is a reasonable expectation to exceed R50 000 in taxable supplies within the 12 month period from date of registration.
- 9.9. Certified invoices as proof of sales must be provided.
- 9.10. Importer's business premises will be visited by inspectors of the Inspectorate: Import and Export Control prior to the consideration of the application. Existing importer's business premises will be visited should it be deemed necessary.
- 9.11. Applicants must provide municipal proof of its registered address as listed in the business CIPC documents.
- 9.12. Applicants must provide proof of country of import and proof that they have secured supply from abroad;
- 9.13. Where an entity is owned or partly owned by a person or persons who are non-citizens or non-residents of RSA, or these persons own any shareholding in such entity, applications should be accompanied by certified copies of the following documentation:
 - 9.13.1 South African Identity issued document and passport;
 - 9.13.2 Valid Business Visa and a letter of recommendation from the Department of Trade, Industry and Competition (thedtic);
 - 9.13.3 Proof of extension of permanent residence, and
 - 9.13.4. Any other information as ITAC may require.

Applicants shall not be related to any existing importers or current permit holders in any way. Note that the definition of related parties in terms of Section 2 of the Companies Act 70 of 2008 and Section 66 (2) of the Customs and Excise Act 91 of 1964 (as amended) apply to these applications and ITAC reserves the right to request whatever appropriate and relevant information it deems necessary to properly evaluate each of the applications submitted. Also for Tax purposes, the Customs and Excise Act, Section 66 (2) (i) – (viii)'s objective is to ensure that no two people use the Act to derive the same benefit on a multiple scale.

10. Please note that in terms of Section 66 (2)(a) of the Customs and Excise Act, two persons shall be deemed to be related, *inter alia*, when:
- (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognized partners in business;
 - (iii) the one is employed by the other;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.
11. The take-over or sale of a business as a going concern, which deals, in among others, with worn overcoats subject to such rebate permit; shall warrant the permit holder first to notify ITAC of such sale as rebate permits or the allocated quota issued under such permit are not transferrable without the prior approval of ITAC on application made in terms of Section 26 showing demonstrable good cause why such permit should be transferred or re-allocated to the new entity or its management.
12. Permit holders shall not operate or conduct business from or store their goods cleared in terms of the permit on the same premises. All importers that are companies or closed corporations must submit their company or close corporation registration documents, and ITAC reserves the right to verify the shareholding or membership of the companies or close corporations with the Companies and Intellectual Property Commission (CIPC).
- 12.1 "Premises" include a warehouse, office, establishment, store, shop, quarters and dwelling".
13. An entity that has previously utilised a permit under this rebate provision but has not applied for another permit under this rebate provision for a period of one year following the issue of the aforementioned permit. **(In respect of this category, importers will be limited to 5 with a quota of 20 000kg based on a first-come first-served basis).**
14. The quantity of overcoats to be imported by each importer will be limited and the criteria that will be used for the allocation of the quantity of overcoats that each importer may import under this rebate item will be as follows:
- Existing Importers**
- The quantity imported during the validity of the rebate permit period will be subject to a reduction in quota allocation of 10% per year over the next 3 years with no quota increase, effective from the date of implementation by SARS in the Customs and Excise Act, No.91 of 1964 through a publication in the Government Gazette.
 - Existing importers with quota allocations of 20 000kg per year will not be subject to the reduction rate of 10% per year during the next 3 years of the phase-out of the rebate item with no quota increase.
15. All applicants for rebate permits under this rebate item must also apply for an import permit, for the same period, to import the used or second hand overcoats and no rebate permits will be released without the import permit. The rebate permit issued will also be subject to the conditions contained in the import permit issued.
16. It is a condition of permits issued in terms of the rebate provision that the holder of this permit must notify the Manager of the Directorate Import and Export Control, Mr Vuyo Ntambam: Email VNtambam@itac.org.za in writing of the date of shipment, the place of arrival and the expected date of arrival of all consignments at least 7 days prior. Furthermore, imported bales may be subject to the following conditions:
- a) Consignments may be subject to compulsory stop for physical inspection and or audits.
17. All users of rebate permits under this rebate item must inform ITAC without delay if any consignment imported by the permit holder under this rebate item contains clothing items not defined in this rebate item. These clothing items must be kept separate from the rest of the clothing items imported under this

rebate item or any other clothing items in possession of the permit holder and may not be removed until officials of ITAC had an opportunity to inspect these items. ITAC in consultation with the importer and SARS will decide how to dispose of the clothing items incorrectly imported under this rebate item.

18. If a *prima facie* case is established that any condition of this permit has not been complied with, the consignment in terms of which the rebate permit was issued may be seized by ITAC. If it is established that there was non-compliance, 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 and/or the rejection of future applications for permits.