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Commodities Bulletin

Keeping you abreast of the legal issues affecting the commodities industry in Africa.

South Africa: the health promotion levy

The South African sugar industry is under further assault as the new Health Promotion Levy comes into force.

As of 1 April 2018, in an attempt by the South African Department of Health to reduce excessive sugar intake and decrease diabetes, obesity and other related diseases, both entities manufacturing sugary beverages and importing sugary beverages into South Africa will be required to pay a levy of 2.1c/gram of the sugar content that exceeds 4g/100ml.

The Health Promotion Levy (also referred to as the "Sugary Beverage Levy", "SBL" and "sugar tax") is introduced under the Rates and Monetary Amounts and Revenue Laws Amendment Act, No 14 of 2017 (the "Act"). According to the South African Minister of Finance, the levy is expected to generate R1.93 billion in 2018-19.

Are all sugary drinks covered?

Both powder and liquid form sugary drinks are covered under e.g. cocoa powder, syrups (non-fruit juice based), fizzy drinks, cordials. The following are excluded from the levy: 100% fruit juice and vegetable juice, unsweetened milk and unsweetened milk products. The current exemption is contingent on there being no sugar added to these products and the Government has indicated that the exemption will be reconsidered in the future.

Are any companies exempt from paying the levy?

Companies which manufacture sugary beverages using less than 500kg of sugar in aggregate annually are exempt from paying the levy.

Does the tax apply to the "intrinsic" sugar content of beverages or just the "added" sugar content?

The levy will be applied to the total sugar content of sugary beverages (not just the added sugar). Sugar content will be calculated on the sugar content as certified on a recognised test report from a testing facility accredited with SANAS or ILAC.

What about beverages without a valid test report – how will they be taxed?

Beverages without a valid test report will be deemed to contain 20g of sugar per 100ml and therefore taxed at R3.36/litre.

What is the registration process?

Beverage manufacturers must apply for registration (Form DA 185) as a non-commercial or a commercial sugary beverage manufacturer and, if necessary, apply for licensing of their manufacturing premises.

When will manufacturers be taxed?

Imported sugary beverages will be taxed when it is cleared for home consumption. Locally manufactured sugary beverages will be taxed at source. Note that the sugary beverage levy is in addition to any other Customs and Excise Duty payable and imports will not be declared on separate bills of entry.

When are payments of the levy due?

Licenced manufacturers must declare and pay the levy within 30 days from the end of each calendar month (an accounting period). Payment can be made through e-filing or at customs and excise branches using Form DA 179.

South Africa: South African Sugar Association ("SASA") seeks increase in dollar-based reference price for sugar

South Africa's import tariff regime is designed to support local sugar producers against global sugar prices, but, cheap sugar imports, sold at lower than production cost, are drastically threatening the local sugar industry.

The dollar-based reference price currently stands at US$566 per ton (the same as the reference price for 2014 which was already deemed too low based on the cost of production).

According to a publication issued by the Department of Trade and Industry on 14 May 2018, SASA has applied to the International Trade Administration Commission claiming that: "a continuation of the current policy framework will result in a faster downward trend for the sugar industry".

The SASA has requested the dollar-based reference price to be increased from US$566/ton to US$856.32/ton.

Zimbabwe: ZAMCO acquires 58.34% stake in Star Africa Corporation

- The struggling sugar processing company, Star Africa Corporation, has recently received a fresh capital injection from Zimbabwe Asset Management Company ("ZAMCO"), the special purpose vehicle created by the Reserve Bank of Zimbabwe to acquire the bad debts of stressed local companies.
- The acquisition of the majority 58.34% stake in Star Africa Corporation was the result of ZAMCO's debt to equity conversion of its preference shares at a conversion price of US$0.0125 per preference share.
- Given that the Zimbabwean Stock Exchange Listing Rules require that a majority shareholder must offer to buy the shares from the other existing shareholders of Star Africa on terms at least equal to the preference share conversion terms, ZAMCO has sought (and subsequently received) a waiver of this requirement for a 12-month period to enable it to sell down its shareholding to below 35%. ZAMCO has indicated that it will seek to sell its shares to the market once the share price increases to US$0.03.
- The Star Africa bail out is just one of the financially struggling local companies identified by ZAMCO as capable of recovery through fresh capital injection. ZAMCO has acquired bad debts amounting to US$1 billion from stressed local companies including: The Cotton Company of Zimbabwe, RioZim, Cairns, Hwange Colliery Company of Zimbabwe, Border Timbers and CSC.
- According to the CEO of ZAMCO, the rescue scheme has encouraged a number of investors to start conducting due diligence on these entities for the purpose of acquiring either part of the debt (and converting it into equity) or investing into the entity by way of preference shares or similar.

Kenya/Tanzania: Imposition of 25% import tax on Kenyan confectionary goods

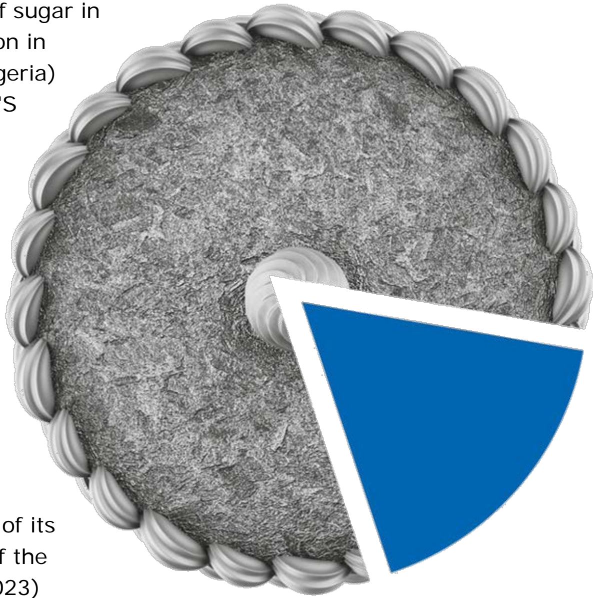
- The strategic trade partnership between Kenya and Tanzania has come under strain once again following Tanzania's imposition of a 25% import tax on Kenyan-made confectionary, juice, chewing gum and ice-cream.
- The Tanzanian Revenue Body has stated that the import tax has been implemented due to Kenyan companies using imported zero-rated industrial sugar in the goods rather than local sugar which would qualify for tax-free passage to Tanzania (and the other countries constituting the East Africa Community Common Market, being: Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda). It appears that the Ugandan Revenue Body is following in Tanzania's footsteps with its treatment of Kenyan confectionary goods.
- The Tanzanian Revenue Body allegedly accused the Kenyan manufacturers of using industrial sugar imported under a 10 per cent duty remission scheme. The Kenyan Revenue Authority has claimed that all Certificates of Origin have been provided to the Tanzanian Revenue Body indicating local origination, but such certificates have been rejected.
- Kenya has retaliated by threatening to block the entry of Tanzanian goods into Kenya. The Tanzanian authorities have been given one month to verify whether or not Kenya is using imported industrial sugar. The review is to be completed by 31 May 2018.

Nigeria: The struggle to master self-sufficiency

On 19 September 2012, the National Sugar Development Council launched the Nigerian Sugar Master Plan (the "NSMP") which sought to raise local sugar production to attain self-sufficiency by 2020; create multiple employment opportunities; and significantly reduce sugar import dependency (aided by the implementation of high tariffs and levies).

Parameters (KPIs)	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total domestic sugar demand (MMT)	1.4	1.43	1.47	1.51	1.55	1.58	1.62	1.66	1.75
Projected sugar production (MMT)	0.03	0.05	0.07	0.1	0.27	0.87	1.23	1.61	1.79
Production as % of domestic demand	2.1	3.5	4.8	6.6	17.4	55.0	75.9	96.9	102.3
Projected sugar import (MMT)	1.4	1.4	1.4	1.4	1.3	0.7	0.3	0	0

However, eight years after the NSMP's launch, self-sufficiency seems to be a distant dream. Nigeria remains the largest importer of sugar in Sub-Saharan Africa, spending approximately US$100 million in 2017 (according to the Governor of the Central Bank of Nigeria) on sugar importation to satisfy domestic needs. The USDA'S Global Agriculture Information Network estimates that for MY2018/2019, Nigeria's domestic consumption demand amounts to 1.61 million tons, yet domestic sugar production will remain at 80,000 tons, resulting in 1.8 million tons still needing to be imported.



The slow progress can be attributed to Nigeria's recession struggle, limited private investment, weak infrastructure, poor policy formulation and implementation, difficulties in land acquisition, flooding of sugar estates and security issues (e.g. conflicts between Boko Haram insurgents and farmers in the sugar producing regions). However, the Secretary of the NSDC indicated on 13 May 2018 that 2013-2018 (the first phase of its backward integration policy) highlighted the weaknesses of the policy, but he was hopeful that the second phase (2018-2023) would achieve self-sufficiency for Nigeria in sugar production by 2023.

An opportunity for foreign direct investment?

Nigeria opened its doors to foreign direct investment in 1995 following the inauguration of the Nigerian Investment Promotion Commission Act (the "NIPC Act"). 100% foreign ownership is permitted in all sectors (save for Petroleum) and the Nigerian Investment Promotion Commission has the mandate to encourage and assist investment in Nigeria. The NSMP identified Nigeria's reservoir of land, water and human resources (over 190 million citizens as at January 2018, more than 62% of which are under 25 years old) to not only be capable of producing sufficient quantities of sugar to meet national demand but also for export, but will this be sufficient incentive to encourage foreign entities to invest in the Nigerian sugar industry? The opportunities are certainly there, but given the lengthy list of issues already identified to have impacted the NSMP, coupled with the wider country risks of corruption, terrorism and bureaucratic bottlenecks, foreign direct investment is unlikely to increase until these issues have been more thoroughly addressed.

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