



# Port Tariff Incentive Programme

'PTIP'

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## Guidelines for Application

Version 2.0.

January 2020

The Ports Regulator of South Africa, in consultation with the National Ports Authority, the Department of Trade and Industry, the Department of Transport, and various other government departments, have developed a **Port Tariff Incentive Programme (PTIP)** in support of beneficiation, industrialisation, and localisation through port tariff regulation.

The details of the Port Tariff Incentive Programme are set out within this document.

Interested parties' / port users are hereby invited to submit their completed Application Forms to the Ports Regulator of South Africa. Application Forms should reach the Ports Regulator no later than the 28<sup>th</sup> day of January, annually.

**Queries and Applications should be addressed to:**

**Ports Regulator of South Africa**  
11<sup>th</sup> Floor, The Marine Building  
22 Dorothy Nyembe Street  
Durban, 4001  
Contact person: Ms. Atiyah Bhabha  
Tel.: (031) 365 7800

**Port Tariff Incentive Programme (PTIP)**

*Supporting Beneficiation, Industrialisation, and Localisation through Port Tariff Regulation*

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## **1. Introduction**

The Ports Regulator of South Africa (the Regulator) recognises that a country's and/ or government organisation's policy, by its very nature, needs to be responsive to the broader interest of the public. The policy should be able to provide a range of incentives that bolster economic output in response to the various economic pressures a country is faced with, whilst at the same time should provide long term certainty for its dependants.

The Tariff Strategy, published in July 2015, seeks to establish cost-reflective tariffs in the South African (SA) port system over the next ten years with an aim to progressively eliminate unfair cross-subsidies. However, the Tariff Strategy does provide for the implementation of cross-subsidies, which are in the public interest, to be implemented within the tariff determination process in the Tariff Methodology.

The Tariff Strategy is aligned to government objectives with regard to economic growth and employment creation. The Strategy aims to create a fair, transparent, and cost-reflective port pricing structure which will allow port infrastructure investment to occur, and in turn create employment and boost trade.

It must be noted that cost reflective tariffs are to be the rule, and the incentives provided for are the exception to the rule. These incentives are not intended to confound the objectives of establishing cost-reflective tariffs.

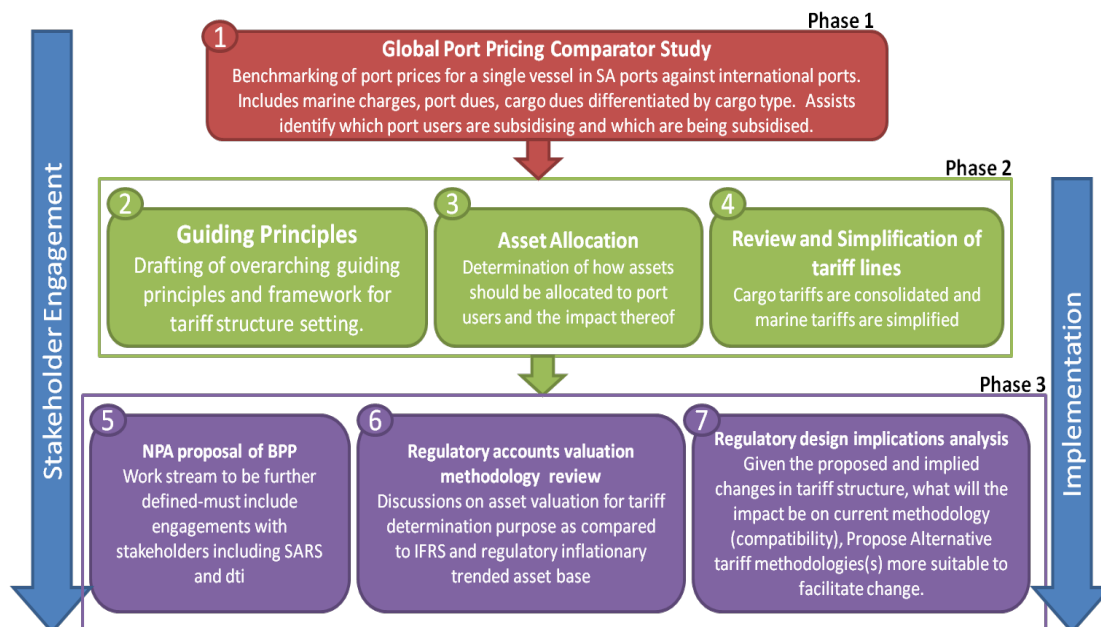
The PTIP forms part of Phase Three of the Regulator's Tariff Strategy process and serves as a mechanism by which cross-subsidies within the port tariff structure may be implemented, quantified, as well as be fair and in the public interest.

The process will seek to determine what is in the public interest, as well as measure an affordable level of cross-subsidisation within the port tariff system through various tariff incentives. The process not only allows for periodic changes and additions to the scheme, but will provide, based on the merits of each case, long term certainty regarding the level and duration of the support.

The purpose of this document is to set out guidelines regarding the process, the information requirements, the Application Form, as well as timelines.

## 2. Background

As part of the development of the Tariff Strategy and the process of correcting the anomalies and imbalances in the tariff structure, the Regulator has defined a phased approach to facilitate these processes, as illustrated in the diagram below.



The *Tariff Strategy for the South African Port System* published in July 2015 addresses the requirement for a set of guiding principles, appropriate asset allocation, and an approach for the simplification and review of tariff lines. This document sets out the process through which the Regulator intends to address the use of port tariffs in the public interest as part of an incentivisation scheme. The Tariff Strategy has provided space for such an intervention, and the formalisation of the Strategy’s strategic objectives are detailed below.

The Regulator’s approach to using port tariffs in order to support national objectives through beneficiation and specific industry support is one of careful consideration. The various pitfalls and unintended consequences of devising and implementing a strategy that may introduce a net cost on the economy as a whole (or an unmanageable cost on the port system specifically) must be taken into account. The deviation from a cost based infrastructure charge based on use and benefit of the provided capacity within the South African port system does introduce a number of complexities that require careful consideration when a decision is made to incentivise the trade in a specific commodity or subsidy of a service above another.

It is important to note the interrelationship between the Tariff Methodology and the Tariff Strategy. The annual calculation of the National Port Authority’s (NPA) revenue and the resultant average tariff change is completed in line with the Multi-Year Tariff Methodology (set to be reviewed for the 2018/19 tariff year). The Methodology sets out the application of the Required Revenue (RR) and Return on Assets model used in the South African port system. The Methodology further determines the total amount of revenue the NPA may raise through port tariffs. The Tariff Strategy, however, only determines who is charged for what portion of the total revenue in the port system and establishes cost-reflective tariffs appropriately allocated to the various user categories. The Regulator is aware that if all charges are passed on fully, the cargo owner (the

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consumer) will indirectly have to pay for all port related costs. Despite this, the benefit of having a more accurate cost allocation is more accurate investment decisions (based on correct revenue flows) and efficiency gains.

In the absence of any specific industry support through the tariff structure, the Tariff Strategy will not result in any significant reduction in total port costs (except for the possibility of foreign shipping lines absorbing some of the costs). Any future reduction in total port costs may only come from the impact of the Tariff Methodology.

This does present an avenue for the support of national objectives through the pricing structure of port tariffs, and the “space” for such a mechanism has been facilitated through the Pricing Strategy, however, any intervention in the tariff structure of the port system must be conducted within the primary and legislated mandate of the NPA.

In terms of Section 72(1)(a) of the National Ports Act, 12 of 2005 (the Act), the NPA is required, with the approval of the Regulator, to determine tariffs for services and facilities offered by themselves and on an annual basis, to publish a tariff book containing those tariffs. In addition, the Regulator, in terms of Section 30 (1) (a) is required to “*exercise economic regulation of the ports system in line with governments objectives*”. The Directives in terms of Section 30(3) of the Act, which were approved on the 13th July 2009 (gazetted on the 6th of August, 2009) and amended on the 29th of January, 2010, require that the Regulator, when considering the proposed tariffs for NPA, must ensure that such tariffs allow the NPA to:

- Recover its investment in owning, managing, controlling and administering ports and its investment in port services and facilities;
- Recover its costs in maintaining, operating, managing, controlling and administering ports and its costs in providing port services and facilities; and
- Make a profit commensurate with the risk of owning, managing, controlling and administering ports and of providing port services and facilities.

In line with the functions of the NPA, defined in Section 11 of the Act, the revenue generated from the NPA’s services is utilised *inter alia* to:

- Provide and arrange for road and rail access within ports;
- Regulate and control port access (navigation within port limits; enhancement of safety and security);
- Provide and arrange for tugs, pilot boats, and other services and facilities for the navigation and berthing of vessels in the ports; and
- Provide, control and maintain vessel traffic services.

The NPA’s Tariff Book sets out the various tariffs that are charged in order to maintain and develop the South African port system. The current approach to the setting of tariffs requires as a starting point, a determination of the total amount of revenue required to fulfil the functions listed above, including the provision of future infrastructure, followed by a determination of how the total revenue gets apportioned to the individual tariffs for specific services and facilities. Determination of the total revenue is based on the applicable Tariff Methodology for the financial year. The

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published Tariff Strategy deals with the manner in which total revenue gets apportioned to the individual tariffs and does provide space for some level of incentivisation through port tariffs<sup>1</sup>.

However, in keeping within the primary mandate of the NPA, a trade-off becomes apparent: Without the injection of external funding into the ports system, all costs must be carried by users of the port system. In other words, any subsidy (whether through a lower tariff or preferential service level) will result in increased costs for other port users.

The current Tariff Strategy has included a number of export promoting incentives that are already “priced in”, with the 50% import/export differentiation on full containers and vehicle imports and exports the most prominent. These have been included in support of the established policy and strategic objectives of the National Government, set out in more detail below, upon which future incentivisation and industry support must be based on.

The Tariff Strategy is aligned to government objectives with regard to economic growth and employment creation. The Strategy aims to create a fair, transparent, and cost-reflective port pricing structure which will allow port infrastructure investment to occur, and in turn create employment and boost trade. In line with the **Industrial Policy Action Plan 2014/15 – 2016/17**, which states:

*“Both government and business have recognised the role of appropriate infrastructure as a driver of economic growth in South Africa, and called for the cost of doing business to be reduced in order to enhance the competitiveness of the country’s goods and services. In this regard, government has identified the crucial role that SOCs play in achieving the strategic objectives of job creation, reducing the cost of doing business, poverty alleviation and positioning SA as the investment destination of choice in Africa.”*

The Tariff Strategy includes mechanisms for subsidies that best serve the interest of the public.

**The State of the Nation Address (2015)** spoke of a “nine-point plan”. Point Three (Advancing Beneficiation), Point Five (Encouraging private sector participation) and Point Nine (Operation Phakisa and growing the ocean economy and other sectors) are of particular relevance to this Strategy. In addition, Outcome Four of the twelve agreed Key Performance Outcomes aimed at “Decent Employment through Inclusive Growth” must take central spot in the assessment of whether a policy objective or regulatory intervention is beneficial to economic growth. Specifically, the creation of decent employment opportunities is an outcome of most, if not all of government’s initiatives. Outcome Four focuses on *“the fundamental outputs that would need to be achieved in the current administration period, to promote employment creation and increase the number of decent jobs, stimulate inclusive growth and further diversify the economy towards more employment generating and higher value added activities”*. These, and other government objectives, some of which are listed below, have been considered in the drafting of the Strategy and must for part of the Regulator’s assessment when considering any incentive implemented through regulatory intervention.

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<sup>1</sup> See Ports Regulator of South Africa “Tariff Strategy for the South African Ports System 2015/16”.

***The National Development Plan:***

The National Development Plan (NDP) aims to achieve the following major goals by 2030:

- Eliminate income poverty – Reduce the proportion of households with a monthly income below R419 per person (in 2009 prices) from 39% to 0%; and
- Reduce inequality – The Gini Coefficient should fall from 0.69 to 0.6.

The enabling milestones which are relevant for the Tariff Strategy are:

- Increase employment from 13 million in 2010 to 24 million in 2030;
- Raise per capita income from R 50 000 in 2010 to R 120 000 by 2030;
- Establish a competitive base of infrastructure, human resources and regulatory frameworks;
- Gross Domestic Product (GDP) should increase by 2.7 times in real terms, requiring average annual GDP growth of 5.4% over the period. GDP per capita should increase from about R 50 000 per person in 2010 to R 110 000 per person in 2030 in constant prices;
- Broaden ownership of assets to historically disadvantaged groups;
- Exports (as measured in volume terms) should grow by 6% a year to 2030 with non-traditional exports growing by 10% a year;
- The level of gross fixed capital formation should rise from 17% to 30%, with public sector fixed investment rising to 10% of GDP by 2030; and
- Durban port capacity should increase from 3 million containers per year to 20 million by 2040.

***The Medium-Term Strategic Framework (MTSF):***

The MTSF defines the strategy up to 2019 for the implementation of the National Development Plan. The following objectives are taken from Outcome Six: Infrastructure:

- Where state-owned enterprises are unable to meet demand for freight services, the State should vigorously encourage private-sector involvement. The Act, which facilitates concession agreements and licensing in Sections 56 and 57 respectively, needs to be used to enable more private sector involvement, with pro-active management of tariff implications;
- Optimal utilisation of assets — Port of Ngqura’s modern deep-water facilities make it attractive for container transshipment traffic;
- Enhance the performance of sea-ports and inland terminals, including initiatives in the National Infrastructure Plan; and
- Public investment as a percentage of GDP is 10% by 2019.

***National Commercial Ports Policy:***

The basic principles of the National Ports Policy are as follows:

- National needs, aspirations and requirements shall be of primary consideration;
- Consideration of user and other stakeholder needs and views need to be embedded in all processes;
- Port system development, management and enhancement will primarily remain a national function;
- Regulation should be kept to a minimum, without compromising national aspirations, safety, health, security, efficiency and environmental sustainability;
- Participants in the market should be treated equally and fairly; and
- The principle of user pays or cost recovery, benchmarked against international best practice to ensure that the costs are globally competitive, will be applied as far as possible, including an appropriate return for infrastructure providers.

***Comprehensive Maritime Transport Policy (CMTP)***

The strategic objectives of the CMTP are:

- To develop and grow South Africa to be an international Maritime Centre (IMC) in Africa serving its maritime transport customers in particular and world trade in general.
- To contribute in Government's efforts of ensuring the competitiveness of South Africa's international trade by providing customer focussed maritime transport infrastructure and services through an innovative, safe, secured, reliable, effective, profitable and integrated maritime supply chain, infrastructure and systems including safety of navigation;
- To promote the growth and broadened participation of local entrepreneurs in the shipping industry and marine manufacturing and related services while vigorously through incentives and continuous improvement in ship registration promote the increase of ships under the South African flag registry;
- To Promote marine transport; manufacturing and related services;
- To provide guidance to the maritime transport sector stakeholders and customers with regard to institutional arrangements, governance and regulatory interventions while ensuring effective and efficient co-ordination across Government on matters of common interest to the growth of the maritime transport sector; and
- To provide a clear framework around which operators, customers, investors and funders can freely participate in maritime transport market to improve growth, performance and competitiveness of the total Maritime Transport sector.
- Establish where feasible a sustainable funding and financing mechanisms and or facility for the growth of the broader maritime transport sector to facilitate infrastructure development and possible acquisition of ships and equipment necessary to meet the needs of customers in particular and the South African economy in general.
- To create and enhance viable and sustainable opportunities for historically disadvantaged entrepreneurs especially, women and youth to participate in maritime transport initiatives.



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- To ensure efficient and effective regulation and clear separation between maritime operations and maritime regulation and these to be reflected in the institutional and governance frameworks.
- From an economic development perspective, create conducive climate for South African perishable goods businesses to take part in the global perishable products market either as producers or as consumers.
- Develop modalities for the creation of a national shipping carrier to serve the SA's economic and trade interests.
- Develop and maintain a competitive ship registration system.

A number of the principles and strategic objectives contained in both the CMTF and the Commercial Ports Policy finds firm footing in the implementation of the PTIP. These policies will be taken into consideration as part of the assessment process and should be considered when preparing an application.

Implementing the PTIP does take place in the context of an imbalanced tariff book and the determination of the individual tariffs has been based on historically differentiated tariff lines, which is problematic in several ways including the:

- Lack of a clear set of principles and rules to be applied in determining the individual tariffs for the various services and facilities, especially where deviating from a baseline tariff;
- Lack of clarity and transparency regarding all operating costs, expenses and revenues incurred or generated from a specific service, facility or land, as well as the value of the capital stock related to such services, facilities or land;
- Lack of explanation for differential tariffs for different commodities using the same handling classification;
- Lack of information detail with respect to services or facilities pricing and cost relationships, making it impossible to determine where and in which direction subsidisation takes place or if it does not; and
- Lack of information on how the tariff structure promotes access to ports and efficient and effective management and operation of ports.

This context will see the PTIP act as a catalyst in some instances serving to accelerate the corrections needed in the tariff book. In particular, as most of these concerns will be addressed through the implementation of the Tariff Strategy over the next ten-year period, it provides for, but does not fully address the use of port tariffs as an incentivisation tool for industrial development objectives. This addition (PTIP) to the Strategy, and the wider regulatory framework for the economic regulation of the South African port system, serves to formalise the process through which the use of the port tariff structure and Tariff Strategy can be utilised to form part of the wider strategic incentive program of the South African government. In essence, the Regulatory Support process is a means for partial deviation from the proposed Tariff Strategy base rates.

### 3. Port Tariff Incentive Programme

The PTIP was initiated by the Regulator in 2016 as part of the Port Tariff Strategy, of which beneficiation forms part of Phase Three. The process is intended to serve as a mechanism by which beneficiation, in the form of cross-subsidies (which are in the interest of the public) may be introduced into the port tariff system.

The Programme is open to all port users, organisations, industry bodies and industry representatives. The PTIP affords users an opportunity to apply for a discounted tariff as per the official Tariff Book of the National Ports Authority. The discount will not however be afforded to a single organisation / industry player, rather the discount will be afforded to the entire industry in the form of an **amendment to a line item** within the Tariff Book.

Due to the nature of the port tariff structure in terms of its user-pay principle basis, the cost of a discount afforded to a user is effectively carried by another port user, successfully rendering it a form of cross subsidisation. The Directives to the National Ports Act, 12 of 2005 are very specific about treatment of cross- subsidisation within the ports as per Directive 23 (1) which states “*In considering the proposed tariffs in terms of Directive 22, the Regulator must have regard to whether the proposed tariffs reflect and balance the following considerations: -*

- (a) A systematic tariff methodology that is applicable on a consistent and comparable basis;*
- (b) Fairness;*
- (c) The avoidance of discrimination save where discrimination is in the public interest;*
- (d) Simplicity and transparency;*
- (e) The avoidance of cross-subsidisation save where cross subsidisation is in the public interest; and*
- (f) The promotion of access to ports and efficient and effective management and operations in ports.*

The Regulator has envisaged an incentivisation scheme that allows limited applications for a cross-subsidy from any applicant including industry or the public sector. It is aimed at assisting small to medium sized enterprises (i.e. QSE’s and EME’s) to enter the market as well as to aid economic growth, beneficiation, national shipping revitalisation, localisation, and industrialisation. All applications received will be submitted to the NPA upon receipt. Furthermore, the NPA will include a summary of the PTIP Application in its annual Tariff Application to the Regulator; the summary is to include the name of the applicant, the details of the request, and the time period of the request, The NPA is required to assist the Regulator in its assessment leading up to the Record of Decision (issued by the Regulator on 01 December).

However, should the NPA wish to initiate an incentive for a particular group / body / industry, then the incentive should be submitted to the Regulator (as an annexure to the Tariff Application) with the necessary motivation and supporting documents. The Regulator, in tariff assessment process, will seek guidance from *thedti* / DoT with regards to adherence and compliance with international trade agreements and multi-lateral obligations.

Cross subsidies will be shared on a system-wide basis as in-category cross subsidisation would significantly reduce the flexibility and quantum of the mechanism as well as long term carrying

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capacity or sustainability. A system wide approach will still retain the ability to focus the effects of a subsidy on certain industries / cargo types, or commodities.

In order to ensure that cross-subsidies will be the exception to the rule, the NPA will be required to propose a cross-subsidy threshold, e.g. 1% of revenue, this threshold must be specified in the NPA's annual Tariff Application to the Regulator. All cross-subsidises provided within the port system should then be shared within this amount. The intention behind the threshold is to avoid a system so fraught with cross-subsidies that it goes directly against the principles of the Tariff Strategy. This, along with other information requirement criteria and hurdle rates, will be defined as per Item 5.3.

A fixed period sunset review will be attached with each subsidy introduced. At the end of said time period, the subsidy will lapse. Should the applicant wish to apply for an extension of the benefit, the applicant will be required, in the second to last year, to motivate for such extension to the Authority.

For a more comprehensive background on the process in the context of the Tariff Strategy, please refer to the Tariff Strategy which may be found on the website of the Ports Regulator ([www.portsregulator.org](http://www.portsregulator.org)).

#### **4. Consultation**

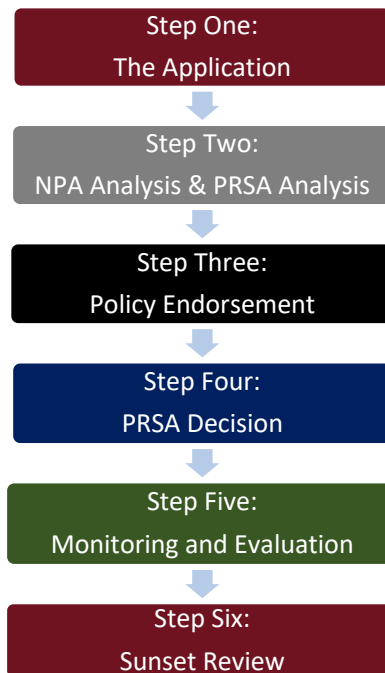
The Port Tariff Incentive Programme was widely consulted at both a State level and Port User level. The Programme was developed by a team comprising members from the Ports Regulator, the National Ports Authority, the Department of Trade and Industry, the Department of Transport, and the National Treasury. A proposed process was published for public comment by the Regulator in March 2017 with the final PTIP being published in December 2017.

Furthermore, the PTIP was consulted with and presented to port users and interested parties through a series of Roadshows held in December 2017 at various ports across South Africa.

The process was reviewed in the 2019/20 financial year and is applicable to all applications and programme entries commencing 28 January 2020.

## 5. The Process

The Ports Tariff Incentive Programme is designed to follow a six step process, as set out below.



### **Step One: The Application**

Any port user, stakeholder, industry body, or government entity may apply, through the PTIP, for an amendment to a tariff line. The Application Forms are available on the website of the Ports Regulator and the NPA. Applications are to be submitted to the Ports Regulator and may be submitted at any point during the year; however, applications must be submitted by the 28<sup>th</sup> day of January of a year for consideration for the next financial year (e.g. must be submitted by 28 January 2018 for implementation in 2019/2020). The Applicant may contact the Regulator at any point regarding a status update of their application.

Applicants are required to complete the application forms with as much information and detail as is available, all financial information will remain confidential as per the provisions of the Directives to the National Ports Act. The Summary Form (page one of the Application) will be published for comment along with the Tariff Application of the NPA on 01 August, however the Application in its entirety will be submitted to the relevant Department and the NPA.

The Applicant may be subjected to various analysis, industry analysis, and may be requested to submit additional information.

### **Step Two: NPA & PRSA Analysis**

Applications received by the Regulator will be submitted to the NPA as they are received and the NPA will partake in all stakeholder engagement as well as government consultation (meetings with *thedti* or the DoT). This will ensure a sufficient time frame for the NPA and the Regulator to jointly conduct the necessary analysis prior to the issuing of the Record of Decision by the Regulator.

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The NPA will, through the necessary channels, assist the Regulator in the analysis of the Application as well as industry analysis as required. The NPA will be required to provide the necessary information in terms of volume figures, financial analysis, cargo handling information, etc.

Furthermore, the NPA is required to define a total, annual threshold for cross-subsidy as well as other in-house criteria or minimum requirement, this is to be made public through the NPA's annual Tariff Application.

Whilst the NPA is not required to make a recommendation in terms of its support for the application, the NPA is required to publish the details of the PTIP Application in its annual Tariff Application to the Regulator. This includes the name of the applicant, the details of the request, the tariff lines affected, the time period of the request.

### **Step Three: State Endorsement**

The Application Form, as received by the Regulator, will be submitted (depending on the nature of the Application) to either the Department of Trade and Industry, or the Department of Transport for their review and endorsement.

Applications concerning industrial trade would require *thedti's* accreditation (multi-lateral, bi-lateral, and other trade agreements (WTO), beneficiation etc.). Applications within this category will be reviewed in terms of any past or current discounts currently in place, all trade agreements in place and applicable to South Africa, National Treasury or current State beneficiation policies, objectives, and programmes as well as any past or current Competition Commission reviews.

Applications in line with maritime transport policy would require DoT accreditation (SA ships registry, coastwise shipping, economic participation etc.). Applications within this category will be assessed in terms of any enabling provision within the CMTP (as referenced by the Applicant), the alignment of the applied duration period with the Maritime Strategy's 2030 measurements and targets, as well as its relation to the promotion of national shipping revitalisation and coastal shipping (alignment with CMTP policy statements).

Should the Application satisfy the criteria as set out above, and it falls within South Africa's trade objectives and parameters etc., it will receive an **endorsement** from the department under which it was reviewed. The endorsement / non-endorsement, and the reasons thereof will be submitted in the form of a written comment back to the Ports Regulator within the Tariff Application commenting process (the recommendation / endorsement will be submitted to the Regulator in September). This will be taken into account when making a final decision.

### **Step Four: PRSA Analysis and Decision**

The Ports Regulator will be the custodian of the PTIP in terms of process management and decision making. All applications will be submitted to the Regulator as annexures to the NPA's annual Tariff Application and will be published for public comment (Confidential information will be dealt with in terms of the Directives to the Act). The Regulator will conduct the necessary economic analysis, review the endorsements, recommendations, and comments as submitted by *thedti*, the DoT, and the NPA, and publish a final Record of Decision as part of the tariff process. Furthermore, the Regulator shall conduct various industry analysis, information verification, manufacturing process, trade history etc.

The decision will contain the details of the necessary amendments to the tariff line, the duration of the incentive, as well as the monitoring processes and guidelines to be followed.

**Step Five: Monitoring and Evaluation**

Monitoring and evaluation will occur for the duration of the incentive and will be unique to each incentive dependant on industry specifics, policy provisions, etc. Monitoring may take the form of the submission of reports, financials, trade data, etc.

**Step Six: Sunset Review**

All incentives will be subject to a sunset review, after which the incentive, the quantum thereof, and the impact will be reviewed and assessed. A decision to renew the incentive, or terminate the cross-subsidy will be taken by the Regulator after consultation with, amongst others, the NPA, *thedti*, and the DoT.

**6. Guidelines to the Application Form**

The Application Form has been developed in a manner that will allow the various reviewing parties to understand the dynamics of the applicant, as well as the relevant industry that will be affected.

**A: Applicant Details**

This section requires the basic information of the Applicant in terms of trade names, tax numbers, contact details etc. Should the application be submitted by an Industry Body / representative, not all information filing requirements will apply (trade data / volumes etc.), the information will be requested through the various analysis conducted by the Regulator/NPA.

**B: Current Tariff Applicable**

Part B requires information that is true and correct at the time of submitting the Application. The 'year' refers to the current year, at the time of applying. The 'Applicable Tariff Category' as per the official NPA Tariff Book, the 'Unit of Measurement' as reflected in the Tariff Book, the listed tariff as per the Tariff Book, and whether the tariff is an import tariff or export tariff.

**C: Requested Tariff**

Part C requires the Applicant to set out the details of the required, discounted tariff as well as the year in which it should be applicable. Furthermore, the Applicant is requested to set out the duration of the requested discount.

**D: Product / Service Details**

The Applicant is required to detail the particulars of the product or service that the discount is required for. The Applicant may attach all the necessary information (in the form of annexures) setting out the product's process in terms of production, logistics, supply chain etc. e.g.: Is the product an intermediary in a process or an end product of a process? Will a tariff discount result in substantial cost-saving measures?

**E: Reasons for Application**

Part E requires the Applicant to state the reasons for the application, the information submitted in response to Part E will be published for comment therefore only information that is non-confidential should be included. The Applicant is requested to detail influencing factors, as well as

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intended outcomes should a discounted tariff be granted. All socio-economic and job creation initiatives the applicant / industry intends on accomplishing will further motivate the discount and may be included.

Should a discounted tariff result in the accomplishment of a State objective/ international agreement, motivation should be provided herein. This includes, but is not limited to, any alignment with international trade agreements applicable to South Africa, any alignment with CMTP (include specific reference), any alignment with Operation Phakisa, etc.

### F: Market/Industry Details

The details provided within Part F will assist the economic analysis and feasibility of the proposal. The incentive will not be provided to a single organisation but rather to the tariff line within the NPA's official Tariff Book. The Applicant is required to provide, with as much detail as possible, details of other industry players as well as information regarding an industry representative / association.

### G: Trade Information

Spreadsheets have been developed in order for the streamlining of the information submission process. Applicants are required to complete the various spreadsheets with information that has been audited, is true and correct, and may be verified. Furthermore, applicants may submit additional information as they may deem necessary to the decision making process.

The Applicant is required to set out any incentives / trade discounts / beneficiation measures currently offered by the State, or any incentives / trade discounts / beneficiation measures that may have been offered in the past fifteen years. Furthermore, the Applicant is required to set out any dealings with the Competition Commission, either currently or in the past.

### H: Socio Economic Initiatives

The Applicant is encouraged to set out any socio-economic influences the discount will have in terms of job creation, economic growth, industry growth, trade forecasts, etc. A commitment from the Applicant is required in order for the incentive to be effectively monitored and evaluated. Question Six and Seven of Part G provides space for the Applicant to set out the manner in which historically disadvantaged persons will be prioritised and assisted, as well as the means by which employment will be created as well as forecasts of such. The Applicant is not limited to the Application Form and may submit all the necessary data that will further motivate the need/justification of the cross-subsidy. Furthermore, should the application fall within the sphere of maritime transport, the Applicant should set out any plans to invigorate domestic shipping and promotion of maritime transport and manufacturing.

## **7. Confidential Information**

Whilst it is necessary for an Application to be published, it is understood that all financial information and volume data must remain confidential. The Applicant's name will be published, as will the details of the product / service that the discount is relevant to. Further, all socio-economic initiatives the Applicant is proposing will be published for public comment. The 'Summary' of the Application, as contained on page one of the Application Form will be published for comment.

## **8. Timelines**

All applications are to be submitted to the Ports Regulator of South Africa by 28 January of any year. The Ports Regulator will manage the process and submit all received applications to the National Ports Authority and either the Department of Transport or the Department of Trade and Industry by the last day of January. Officials from each department have been assigned the responsibility to review all received applications and conduct analysis as per their respective mandate.

The NPA will partake in all stakeholder engagements and will assist the Regulator in its analysis of the application. The NPA will publish details of the application as set out in Section 5 of this Framework in its annual tariff Application, for public comment.

The relevant state department (*thedti* or the DoT) will respond to the call for written comment (through the tariff application process) with a recommendation / non-recommendation

The Ports Regulator will publish the Tariff Application and the Executive Summary of the PTIP Application as per the tariff process. A final decision will be published in the form of a Record of Decision, published four months after receipt of the Tariff Application from the Authority.

## **9. Conclusion**

As evident in the proposal, the Regulator recognises that policy, by its very nature can be extremely fluid at times, but at the same time provides long term certainty for its dependants. With this in mind, the Regulator has opted to balance these two requirements by defining a set process whereby the port tariff system may be utilised to support policy objectives. The process not only allows for constant change and additions to the scheme, but based on the merits of each case, provide long term certainty regarding the level and duration of the support.

### *Note:*

*This document should be read in conjunction with the Ports Regulator's Tariff Strategy as published in July 2015 and the Port Tariff Incentive Programme as published in March 2017.*



**Annexure A: Definitions and Abbreviations**

Applicant:	The party submitting an application as provided for purposes of initiating an investigation.
Applied Rates:	The prevailing tariff rate as contained in the latest National Ports Authority tariff book.
Coastal Shipping	<ul style="list-style-type: none"> <li>a) any navigational service carried out in a port in the Republic to serve a ship and a port facility or any navigational service carried out for logistics support of a ship and a port facility in the sea in the activities of prospecting and mining of minerals and hydrocarbons; or</li> <li>b) the carriage of cargo by a ship from one place in the Republic or above the sea to any other place in the Republic or above the sea, either directly or through a place outside the Republic and includes the carriage of cargo in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the Republic, whether in or under the sea, provided that this shall not apply to cargo which is consigned on a through bill of lading to or from a port outside the Republic and is unloaded at a port within the Republic for transshipment purposes only; or</li> <li>c) the towage of any ship from or to any port or point in the sea.</li> <li>d) the carriage of fee paying passengers by a ship from any place in the Republic either directly or through a place outside the Republic to the same place or to any other place in the Republic without any call at any port outside the Republic, other than as an in-transit or emergency call;</li> <li>e) the carriage of a passenger other than a fee paying passenger by a ship from any place in the Republic to any place above or under the sea, or from any place above the sea to the same place or to any other place above or under the sea where the carriage of the passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under sea; and</li> <li>f) any ocean research activity in the sea using a ship;</li> <li>g) any ship related service provided to an installation.</li> </ul>
Coastwise traffic and coasting ships:	defined in the Customs and Excise Act 91 of 1964 as amended.
Commission:	in terms of maritime safety information system is where an institution or person makes a mistake (negligence) that causes damage or loss. The accountability remains with the coastal State.
Competent Authority:	any person or organisation that has the legally delegated or invested authority, capacity, or power to perform a designated function.
Comprehensive Maritime Transport Policy:	CMTP / that component of national policy relating to all forms of transport by sea (waterborne transport) including inland waterways and intermodal links (including inland ports) of the state. It covers all types of infrastructure

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	to support movements of goods and people; off-shore industries and is concerned with creating the conditions for a safe, secure and stable environment within which all national maritime assets can develop and be utilised for the socio-economic growth and prosperity of the nation whilst being of service to international shipping and trade.
Confidential Information:	<p>(a) By nature confidential; or</p> <p>(b) Recognised in terms of the ITAA to be otherwise confidential.</p> <p>“Information that is by nature confidential” means trade, business or industrial information that:</p> <p>(a) Belongs to a person, firm or the State,</p> <p>(b) Has a particular economic value, and</p> <p>(c) Is not generally available to or known by others, and the disclosure of which could:</p> <p>(i) Result in a significant adverse effect on the owner, or on the person or firm that provided the information, or</p> <p>(ii) give a significant competitive advantage to a competitor of the owner.</p>
Correspondence	Any written communication by a party submitted by hand delivery, mail, facsimile or electronically to the Commission for purposes of the investigation.
Deadlines	The final date for submissions, responses, comments and requests and the like as envisaged by the different sections of the anti-dumping-, countervailing, safeguards, and tariff application regulations, and shall be deemed to be at 15:00 South African standard time on the deadline indicated, unless expressly otherwise indicated.
<i>thedti</i>	The Department of Trade and Industry of the Republic of South Africa.
DoT	The Department of Transport of the Republic of South Africa.
Domestic Industry	Also referred to as the SACU industry. It refers to all the domestic producers (i.e. the SACU industry) of the like products, or those whose collective output of the products constitutes a major proportion of the total domestic production of those products.
Domestic Market / Sales	It refers to the domestic market or sales in the country of origin of the allegedly dumped products i.e. the domestic market and domestic sale of the exporting country.
Evidence	Substantiated information that is presented by an “interested party” as proof of its statements or initial allegations.
Exchange Rates	The price at which one currency is exchanged for another based on the prevailing supply and demand conditions in the foreign currency markets at a given time.
Export	Bringing or sending goods, or to cause them to be brought or sent, into South Africa from a country or territory outside South Africa.

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Exporter	Any person or company who brings or sends goods, or causes them to be brought or sent, into South Africa from a country or territory outside South Africa. The Guide’s reference to “exporter” includes the overseas manufacturer of the product under investigation.
Export Price	The price actually paid or payable for goods sold for export, net of all taxes, discounts and rebate actually granted and directly related to that sale.
Export Subsidies	It refers to the provision by a Government of a direct subsidy to a firm or an industry, contingent upon export performance.
Ex-works	The seller delivers when he places the goods at the disposal of the buyer, at the seller’s premises or another named place not cleared for export and not loaded on any collecting vehicle. See Ex-Works.
Facts Available	The information that is available to ITAC at the time of making its determination, whether preliminary or final provided that all requirements regarding non-confidentiality and timely submission have been met.
Fair Trade Remedy	A safeguards measure is considered to be a fair trade remedy, since it is used in addressing a practice, which is not an unfair trade remedy. See Unfair Trade Remedy
Filing of Information	All case-related documents and working papers should be filed in a sequence, preferably in a chronological order, and clearly laded with a file number and identification number, together with a detailed index to the documents.
Final Determination	After considering comments received on the preliminary report, the Regulator will inform “interested parties” of its final determination concerning the publication of its final report.
Free on Board	The International Chamber of Commerce (“ICC”) Incoterms 2010 defines that the seller has delivered the goods when it passes the ship’s rail at the named port of shipment.
Goods	It includes:  (a) All wares, articles, merchandise, animals, currency, material or objects of whatsoever nature; and, in relation to any particular goods,  Any other goods that is reasonably capable of being substituted for them (taking into account ordinary commercial practice and geographical, technical and temporal constraints).
Industrial Policy	Any government regulation, intervention or law that aims to encourage the ongoing operation of, or investment in, a particular industry.
Import	Bringing goods, or causing them to be brought, from outside South Africa into South Africa.
Import Statistics	The figures depicting the volume, value, and unit price of imported products. Also referred to as trade statistics.
Importer	Includes any person who, at the time of importation:

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	<p>a) Owns the goods imported;</p> <p>b) Carries the risk of any goods imported;</p> <p>c) Represents the importer, or acts as if he is the importer or owner of any goods imported;</p> <p>d) Actually brings the goods into South Africa or the SACU;</p> <p>e) Is beneficially interested (in whatever way) in any goods imported; and</p> <p>f) Acts on behalf of any person referred to in the aforementioned.</p>
Incoterms	Refers to the ICC's International Commercial Terms and its latest revision, Incoterms 2010. The purpose of Incoterms is to provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade.
Interested Party (ies)	<p>It includes:</p> <p>An exporter or the foreign manufacturer of the importer of a product that is subject to investigation, or a trade or business association (a majority of the members of which are manufacturers, exporters or importers of such product);</p> <p>The Government of the exporting Member; and</p> <p>A producer of the like product in the importing Member's country, or a trade and business association of the majority of the members that produce the like product in the territory of the importing Member.</p>
Levels of Trade	Used to indicate whether the product is sold to a wholesaler, retailer, end-user, through an agent, etc.
Like Products/services	<p>The term "like product (<i>produit similaire</i>)" is interpreted as meaning a product that is identical, i.e. is denoting alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects has characteristics closely resembling those of the product under consideration.</p> <p>Also referred to as "directly competitive product or service", which means a product that competes directly with the product under investigation.</p>
Macro Economics	The study of the sum total of economic activity, dealing with the issues of, amongst other, growth, inflation, and unemployment.
Material Retardation	It occurs when imports materially hinder or retard the establishment of an industry. Such form of injury can only be allowed in instances where production has not yet started.
Micro Economics	The study of how individuals and businesses make decisions and how these decisions affect the prices and output of goods and services.
National Ports Act	The National Ports Act, 12 of 2005, and its associated Regulations and Directives.
NPA / the Authority	National Ports authority as established and defined in the National Ports Act, 12 of 2005.

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Non-Confidential Information	<p>Non-confidential information should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.</p> <p>All correspondence submitted not clearly indicated to be confidential shall be treated by the PRSA/NPA/<i>thedti</i>/DoT as non-confidential.</p>
Normal Value	<p>It means: The comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or</p> <p>In the absence of information on a price contemplated in subparagraph (i), either:</p> <p>The constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit;</p> <p>- Or</p> <p>- The highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative.</p>
Ports Regulator of South Africa/PRSA	The Ports Regulator of South Africa as established by the National Ports Act, 12 of 2005.
Public Body	It includes a person, firm or body that acts on behalf of the Government of or another public body within a country.
Subsidy(ies)	Is deemed to exist if a benefit is conferred on products at Government expense, for a specific action being taken such as exporting.
Subsidised Exports	<p>Goods exported into the SACU, in respect of which the Government of or a public body within any country:</p> <ul style="list-style-type: none"> <li>• Has provided: <ul style="list-style-type: none"> <li>– Any form of financial aid,</li> <li>– Any form of assistance with its production, manufacture, transportation or export, or</li> <li>– Any similar assistance, or</li> </ul> </li> <li>• Has foregone any revenue that would otherwise be due to that Government or public body.</li> </ul>
World Trade Organisation	Came into existence on 1 January 1995 as a result of the Uruguay Round of Trade Negotiations, and has been responsible for overseeing the multilateral trading system.