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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

NO. R. 2801

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**POLICY IMPLEMENTATION ACTIONS ON MEASURES TO RESTRICT AND REGULATE TRADE IN FERROUS AND NON-FERROUS METALS WASTE, SCRAP AND SEMI-FINISHED FERROUS AND NON-FERROUS METAL PRODUCTS TO LIMIT DAMAGE TO INFRASTRUCTURE AND THE ECONOMY****1. Introduction**

- 1.1 Following the publication of the draft policy proposals on measures to restrict and regulate trade in ferrous and non-ferrous metals waste, scrap and semi-finished ferrous and non-ferrous metal products to limit damage to infrastructure and the economy in Government Gazette No. 47202<sup>1</sup> on 05 August 2022 and taking into consideration the public comments on those draft policy proposals, Government intends to implement various interventions in what may broadly be described as a three-phased approach.
- 1.2 We first sketch a high-level overview of the various phases, followed by a more detailed discussion.
- 1.2.1 In *phase 1*, the focus is on interventions that are to be implemented without delay through the use of directives and notices:
- 1.2.1.1 imposing a temporary (six-month) prohibition on the export of copper waste and scrap metal, ferrous waste<sup>2</sup> and scrap metal,<sup>3</sup> and re-

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<sup>1</sup> [http://www.thedtic.gov.za/wp-content/uploads/47202\\_5-8\\_TradeIndComp\\_Scrap\\_Metal.pdf](http://www.thedtic.gov.za/wp-content/uploads/47202_5-8_TradeIndComp_Scrap_Metal.pdf).

<sup>2</sup> Waste refers to materials that are not prime products (i.e. products produced for the market) and are intended to be discarded or are required to be discarded. Waste may be generated during the extraction of raw materials, during the processing of raw materials to intermediate and final products, during the consumption of final products, and during any other human activity. Waste does not include residuals directly recycled or reused at the place of generation (i.e. establishment) or waste materials that are directly discharged into ambient water or air. See <https://www.oecd-ilibrary.org/sites/5ab8c6da-en/index.html?itemId=/content/component/5ab8c6da-en>.

<sup>3</sup> Scrap metal includes any used, broken, worn out, defaced or partly manufactured goods made wholly or partly of non-ferrous or ferrous metal, lead or zinc or any substance of metallic waste or dye made of any of the materials commonly known as hard metals or of cemented or sintered metallic carbides. See section 1 of the Second-Hand Goods Act No. 6 of 2009.

- melting ingots of iron or steel, with exceptions for stainless steel and ferrous waste and scrap generated in the ordinary course of business as a by-product of a manufacturing process;
- 1.2.1.2 continuation of the export permit system for waste and scrap metal that is already subject to export control;
- 1.2.1.3 the creation of an export permit system for semi-finished metal products;
- 1.2.1.4 the creation of an import permit system for furnaces and various other scrap transformation machines.
- 1.2.2 In *phase 2*, the focus will be on the continuation of the measures referred to in *paragraphs 1.2.1.2 to 1.2.1.4* above; and the enhancement of the regulation of the scrap metal trade through amendments to the Regulations published under the Second-Hand Goods Act 6 of 2009, which will bolster the applicable metal trading registration regime. Additionally, further interventions during this phase could include, for example, a limitation on the ports and land borders for export of waste, scrap and semi-finished metal products (more detail on these and other possible interventions is provided below).
- 1.2.3 *Phase 3* will include legislative amendments to, for example, the Second-Hand Goods Act, other pieces of legislation and the possible introduction of new legislation to implement a metal trading regime, to prohibit the trade of waste, scrap and semi-finished metals in cash, and to blacklist offenders of the metals regime.

## 2. Rationale for the final package of implementation actions

### Phase one

Policy proposed	Final action	Rationale for the change
Prohibition on export of copper waste & scrap metal	Prohibition on export for 6 months	No change
Prohibition on export of ferrous waste and scrap metal and re-melting ingots of iron or steel	Prohibition on export for 6 months, with exceptions for stainless steel and ferrous waste and scrap metal generated in the ordinary course of business as a by-product of a manufacturing process.	Exceptions are based on the need to ensure that the export ban is proportionate, having regard to the pressing need to combat metals theft and minimising any resultant economic harm
Prohibition on export of other waste and scrap metal (including: magnesium, nickel, aluminium, lead, zinc, tungsten, cobalt, bismuth, titanium, zirconium, molybdenum, tantalum, cadmium, antimony, manganese, beryllium, chromium, hafnium, cadmium, germanium, vanadium, gallium, indium, niobium (columbium) and articles of these metals)	No export prohibition, continuation of export permit system for waste and scrap metal already subject to export control, including stainless steel and other ferrous waste and scrap metal excluded from the export prohibition. Waste and scrap of cobalt, bismuth, titanium and zirconium will not be subject to the export permit system.	Impact on public and other infrastructure of theft of these metals is less damaging to the SA economy
Export permit for semi-finished products	Extension of the permit control system for semi-finished metal products to include additional semi-finished metal products, including some that were initially included in the draft export prohibition notice.	Permit control system will allow for tracking sources of material inputs into semi-finished products, and also allow for more oversight
Permit system for import of furnaces and scrap transformation machines	Permit control for imports of furnaces and ovens for the heat-treatment of ores, pyrites or metal, as well as, granulators, guillotines, shredders and other devices used to change the form of waste and scrap metal.	No change

### Phase Two

Metal trading regime	Bulk of the proposals remain the same as the draft policy. Exception is that waste pickers are allowed to trade in all other metals except copper (via an exception to the registration requirement).	Copper theft has a devastating cost to society, accordingly no exceptions are provided for the regulatory regime governing copper. The ability to collect and sell other metals allows for waste pickers to generate some income and to, in due course,
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		become part of the formal value-chain
Limited ports and land borders for export of waste, scrap and semi-finished products	Working with SARS to consider the utilisation of ports with monitoring capabilities.	N/A

### 3. Details of the policy implementation actions

- 3.1 Although the phases may appear from their description to be sequential, they are not rigid and will, in practice, overlap.
- 3.2 The export prohibition in phase 1 is anticipated to last for six (6) months from the date on which the prohibition is imposed. Work on the amendments to existing regulations has commenced and could be gazetted in between phase 1 and phase 2. The legislative action called for in phase 3 may take up to 24 months to finalise, starting from the launch of phase 1.
- 3.3 In this section, the three proposed phases are described in further detail. If an intervention cannot be introduced in a particular phase for legal or other reasons, it is envisaged that it will move to a subsequent phase. Further, the rules relating to different product types (e.g. waste, scrap and semi-finished metal products) may be introduced at different points within each phase.

#### 3.4 Phase 1:

##### Temporary export prohibition on scrap metal

- 3.4.1 *Six-month export prohibition.* A temporary six (6) month prohibition on exports of copper and ferrous waste and scrap metal, and re-melting ingots of iron or steel with exceptions for stainless steel and ferrous waste and scrap generated in the ordinary course of business as a by-product of a manufacturing process.

##### Application of the Price Preference System (PPS)

- 3.4.2 The PPS will be suspended for the duration of the export prohibition in **respect of those categories** of waste and scrap metal that fall within the prohibition.

- 3.4.3 The **PPS will continue to apply to all other waste and scrap metal**, including the ferrous waste and scrap metal that falls within the exception referred to above.

**Permit system for the export of waste and scrap metal**

- 3.4.4 A permit system will continue to apply to the export of waste and scrap metal listed in Government Notice R92 published in Government Gazette 35007 of 10 February 2012 (as amended).

**Permit system for the export of semi-finished metal products**

- 3.4.5 A permit system will be created to control the export of ferrous and non-ferrous semi-finished products. Government Notice R92 published in *Government Gazette* 35007 of 10 February 2012 (as amended) is to be amended to reflect this.

**Permit system for the import of furnaces and other scrap transformation machines**

- 3.4.6 An import permit system is to be imposed on devices used to change the form of scrap metals (small furnaces and ovens for the roasting or other heat-treatment of ores, pyrites or of metals as well as granulators, guillotines, shredders and other devices which can be used to smelt or change the form of waste or scrap metal into semi-finished metal products). Government Notice R91 published in *Government Gazette* 35007 of 10 February 2012 (as amended) is to be amended to give effect to this.

**Coordinating task force**

- 3.4.7 A Metal Trade Task Force has been created to work with the SAPS' Specialised Multi-disciplinary Economic Infrastructure Task Teams to plan, implement and monitor inter-agency efforts to eradicate theft and damage of infrastructure which is incentivised by scrap metal domestic trade and exports. In addition, it is intended to create a centralised repository for monitoring crimes linked to metal theft from critical public infrastructure.

**3.5 Phase 2:****Amendment of the regulations under the Second-Hand Goods Act**

- 3.5.1 It is envisaged that the Minister of Police will consider amending the regulations made under the Second-Hand Goods Act so as to impose more rigorous regulations in respect of dealing in scrap and semi-finished metals and to strengthen reporting requirements for metal dealers and recyclers. To the extent necessary, amendments to regulations under other legislation may also be made.
- 3.5.2 The following changes are being considered (any intended amendment to the regulations will first be published for public comment and thus these measures are merely proposals at this stage).
- 3.5.2.1 *Enforcement of the registration regime for scrap metal sellers.* While the Second-Hand Goods Act contemplates that both buyers and sellers of scrap metal are required to be registered, this requirement is currently being enforced against buyers but not sellers. Going forward, the Government intends to enforce the requirement that scrap metal sellers are subject to the registration regime envisaged in the Second-Hand Goods Act. It is envisaged that a registration exemption will apply in relation to waste pickers (but not in relation to copper scrap metal).
- 3.5.2.2 *Enhanced registration requirements.* Registration as scrap metal buyers and sellers will only be granted to businesses that have a satisfactory Tax Compliance Status. SAPS is considering the introduction of a new registration fee that will be reflective of the costs of administration and enforcement to combat theft in the metal industry. The registration fee could also be set at a level aimed at ensuring that "fly-by-night" operators are discouraged from registering to buy and sell scrap metal. The registration fee for copper (and copper alloys) may be higher than the fee for other scrap metal products given the particularly dire nature of copper theft and its impact and thus the

need for greater levels of inspection and enforcement of trade in copper and copper alloys.

3.5.2.3 *Enhanced reporting requirements.* An input-output reporting system will be introduced that will be used both for purposes of compliance monitoring under the Second-Hands Goods Act and for monitoring exports of scrap metal and semi-finished products. The reporting system will require businesses to submit monthly electronic reports to both SAPS and ITAC, showing all purchases and sales of metal products (scrap, semi-finished and finished) by volume and value. The reports will *inter alia* contain the following information.

3.5.2.3.1 *Purchases table.* Each row of the table will show a different purchase. The row will show a) the date of purchase, b) the type of metal purchased, c) the grade of metal purchased, d) the tonnage purchased, f) the total cost of the purchase, g) the business registration number of the seller, or in the case of an individual seller, the identity number of the individual, and h) any additional fields that may be required to secure the objective of input-output reporting.

3.5.2.3.2 *Sales table.* Each row of the table will show a different sale. The row will show a) the date of sale, b) the type of metal sold, c) the grade of metal sold, d) the tonnage sold, e) the total revenue of the sale, f) the business registration number of the buyer, g) in the case of an export sale, the Unique Consignment Reference (UCR), and h) any additional fields that may be required to secure the objective of input-output reporting.

3.5.2.4 In order to minimise the reporting burden for players in the metals sector, Government will endeavour to implement a single monthly reporting system which multiple departments or entities can utilise. This will ensure that enterprises are not required to provide different monthly reports to the SARS, SAPS and ITAC, through the use of a single-window application (SWA). These reports will be used to

identify high-risk transactions and suspicious transactions and will assist the SAPS in law enforcement activities.

3.5.2.5 *Inclusion of semi-finished metals in the registration regime.* While semi-finished metal products fall within the scope of application of the Second-Hand Goods Act,<sup>4</sup> buyers (and sellers) of semi-finished metal products are not currently registered. The Government will thus take steps to ensure that these businesses are registered.

3.5.2.6 *Additional restrictions on who can sell copper scrap and semi-finished copper.* It is envisaged that registered copper scrap metal sellers will be limited to businesses that either (a) produce scrap as a by-product of their normal operations (e.g. off cuts and used infrastructure) or (b) are traders and semi-finished producers that are up to date with their reporting requirements.

3.5.2.7 *Requirement for registered buyers to only purchase copper scrap and semi-finished copper products from registered sellers.* The Government is also considering imposing a requirement that registered buyers may only purchase scrap or semi-finished copper products from registered sellers of such products. The effect of this would be that all sales of scrap and semi-finished copper products (even by those persons who do not carry on the business of dealing in scrap or semi-finished metals) will be prohibited other than between registered entities or persons.

### **Implementation of permit system for scrap exports**

3.5.3 *Implementation of permit system for scrap exports.* No permit will be required for copper waste and scrap metal, ferrous waste and scrap metal, and re-melting ingots of iron or steel during the temporary prohibition phase, subject to limited exceptions for stainless steel and ferrous waste and scrap metal generated in the ordinary course of business as a by-product of a manufacturing process.

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<sup>4</sup> Section 1 of the Second-Hand Goods Act defines "scrap metal" as including "any used, broken, worn out, defaced or partly manufactured goods made wholly or partly of non-ferrous or ferrous metal, lead or zinc or any substance of metallic waste or dye made of any of the materials commonly known as hard metals or of cemented or sintered metallic carbides" (emphasis added).



3.5.4 During the six (6) month prohibition of scrap metal exports, the existing export permit system will be applied to the scrap metals already subject to export control. This permit system will include the application of the PPS.

3.5.5 The lessons learnt during the first six months will guide the implementation of phase 2 and other implementation actions.

3.5.6 *The potential extension of the temporary export prohibition.* If sufficient progress has not been made in the implementation of the phase 2 interventions and/or the extent of copper and ferrous metal theft has not been sufficiently reduced, the temporary export prohibition may be extended. The other option that government may consider adopting is to extend the export prohibition for more limited types of scrap and waste metal (e.g. copper).

#### **Continuation of permit system for the export of semi-finished metal**

3.5.7 It is envisaged that the permit system for semi-finished metal products will continue into phase 2.

#### **Restrictions on ports and land borders**

3.5.8 *Ports and land borders:* Consideration is being given to limiting exports of waste, scrap and semi-finished metal products to designated ports and land borders.

#### **Policy coordination, alignment and enhanced cooperation**

3.5.9 *Policy coordination between countries in regional bodies.* Government will enhance co-operation with SADC, SACU and the AU to avoid scrap metal syndicates relocating to neighbouring countries to circumvent South African restrictions.

3.5.9.1 Government understands that criminals and criminal syndicates may attempt to circumvent the more onerous registration system by, *inter alia*, smuggling stolen metals out of the country including via illegal land border crossings. This would undermine the policy proposals being considered and may lead to continued theft of metals from public and other infrastructure. Government will therefore be engaging with

all relevant regional and continental structures to encourage heightened vigilance at land border posts and crossings.

3.5.9.2 In addition to avoiding circumvention of South Africa's policy measures, other African states are likely to face similar risks to their public infrastructure. Government will share its approach to regulating metal trade with other African states and seek to develop coordinated and aligned policy measures via participation in SACU, SADC, and the AU structures.

3.6 **Phase 3:**

3.6.1 This phase envisages potential amendments to the Second-Hand Goods Act and related legislation as well as the possible introduction of a new dedicated metal trading statute to further strengthen the fight against metal theft and damage to infrastructure. The latter statute may include a comprehensive licensing system for buyers and sellers of scrap and other metal products, which could replace the registration system provided for in the Second-Hand Goods Act.

3.6.2 Legislative measures under consideration for phase 3 include the following:

**Prohibition on the Use of Cash in Waste, Scrap and Semi-finished Metal Transactions**

3.6.2.1 As noted in the Budget Review 2022, the Government is contemplating additional anti-money-laundering measures, including customer due diligence, recording of Finance Intelligence Centre Act No. 38 of 2011 information for all buyers and sellers of waste, scrap and semi-finished metal products, and the prohibition of cash transactions for all waste, scrap and semi-finished metal trade. All waste, scrap and semi-finished metal trades would be required to be concluded electronically, for example through electronic fund transfers (EFT) or innovative digital payments solutions that allows for track and traceability. This will significantly improve monitoring and enforcement as verification and investigations will be able to identify the source of supply in metal transactions.

3.6.2.2 If buyers or sellers are found in possession of waste, scrap and semi-finished metal products that are not backed up by an EFT (or similar) record, the buyer or seller will be subject to sanctions, including the potential withdrawal of their registration.

**Blacklisting of offenders**

3.6.2.3 Government will consider implementing a system in terms of which persons who are found to have committed an offence in relation to metal theft or to have contravened the metals trading regulatory regime will not be eligible for government contracts. This may include blacklisting persons who manage or control an entity that is found to have committed such an offence or to have contravened the regulatory regime.

3.6.3 To the extent that any phase 2 intervention cannot be implemented in that phase because amendments to primary legislation (i.e. Acts of Parliament) are required as opposed to amendments to subordinate legislation (e.g. regulations), they will be implemented in phase 3.