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Ban on the purchase and import of used / second-hand fishing vessels into South Africa by ITAC



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1. Introduction:

- In the last 2 to 3 years I have been involved in several second hand fishing vessel purchases that have been impacted by the decisions of ITAC - International Trade Administration Commission of South Africa. These have either been foreign flagged vessels already in South Africa or foreign vessels outside of South Africa.
- These refusal decisions will have a devastating impact on the companies involved as well as the fishing industry as a whole.
- I will provide a brief overview of the fishing industry as it is now and what lies ahead for the industry and various associated parties and then discuss ITAC, their role and their refusal decisions.

1. Overview of Fishing Industry:

- The fishing industry is made up of several sectors each with their own long term rights holders and quota allocations.
- The long term rights are allocated during the FRAP (Fisheries Rights Allocation Process) and these rights are allocated to the relevant rights holders for a period of 15 years. The last round of FRAP has been completed except for some appeals which are scheduled to be dealt with by the end of 2023.
- Companies are now looking to renew their ageing fleet of vessels as they have some certainty having been awarded 15 year rights, especially in the Hake Deep Sea, Hake Inshore and Hake Long Line Sectors, South Coast Lobster as well as the West Coast Pelagic sectors.

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- In the past it was only the large corporate companies that afford to purchase newbuild freezer and wet fish trawlers. A large part of the industry has been built on the purchase, import and operation of second hand vessels from North West Europe and New Zealand in particular.
- The current fishing fleet consist of mostly older vessels, with several vessels in the 50 to 60 year age range and many in the 45 to 50 year age range. The useful life of these vessels is normally about 55 to 60 years. Now is the opportunity to replace these older vessels with newer tonnage.

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- In addition to the vessel age another factor influencing the decision to upgrade to newer vessels is the upcoming adoption of the new “MERCHANT SHIPPING (CONSTRUCTION AND EQUIPMENT OF FISHING VESSELS OF 24 METRES IN LENGTH AND OVER.) REGULATIONS, 2022” and the “THE MERCHANT SHIPPING (CREW ACCOMMODATION) REGULATIONS, 2023” both of which are currently draft regulations and are scheduled to be implemented in 2023/2024.
- The new Fishing Vessel Construction Regulations for Vessels of 24 metres in length and over, once they come into force will be mandatory for all vessels, whether existing or new build. We have been advised by SAMSA (South African Maritime Safety Authority) that they will not allow any exemptions from these regulations. The issue is that many of the current older vessels over 24 metres will not meet the requirements of the new Regulations and will have to be upgraded, disposed of (sold or scrapped) or replaced with newer vessels.

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- Likewise the older vessels and many of the newer vessels will not meet the requirements of the Crew Accommodation Regulations. Even second hand vessels brought into South Africa require upgraded or additional accommodation to be able to operate here.
- Affordability means that in most instances the size of the quota allocation does not allow the purchase of a new build vessel, especially for the larger (over 30 metre) steel vessels, hence the reason why second hand vessels are purchased. For these larger vessels, building locally in GRP is not an option.
- There are currently no local shipbuilders building steel fishing vessels and recent proposals sighted from these yards are not acceptable from a cost point of view, from a vessel design and construction lead time point of view.

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- Hence it is imperative that we are able to upgrade the fleet by purchasing and importing newer second hand vessels.
- In order to purchase and import a used / second hand fishing vessel into South Africa, one has to apply for and obtain an import permit from ITAC. ITAC have in the last few years and are currently refusing to issue import permits for used / second hand fishing vessels. An import permit is not required to import a new build fishing vessel.
- ITAC are also refusing to issue import permits for used /second hand yachts, bunker barges, support vessels and other boats/ships.

1. The International Trade Administration Commission of South Africa (ITAC)

- The International Trade Administration Commission of South Africa (ITAC) is a schedule 3A Public Entity established in terms of the International Trade Administration Act, No 71 of 2002, and came into force on 1 June 2003. ITAC replaced its predecessor, the Board of Tariffs and Trade (BTT) that was established in 1986. The predecessor of the BTT is the Board on Trade and Industries (BTI) that dated back to 1924.
- The aim of ITAC, as stated in the Act, is to foster economic growth and development in order to raise incomes and promote investment and employment in South Africa and within the Common Customs Union Area by establishing an efficient and effective system for the administration of international trade subject to this Act and the Southern African Customs Union (SACU) Agreement. The core functions are customs tariff investigations; trade remedies; and import and export control.

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- ITAC decides on the import permits for used / second hand goods into South Africa.
- In respect of the Act and the Regulations, the updated regulations published on 10 February 2012 in terms of section 6 of the Act provides for the requirement that second hand / used goods require an import permit and reads as follows:
- “..... (b) All second hand or used goods, including waste and scrap of whatever nature, excluding goods referred to in scheduled 4, shall not be imported into the Republic of South Africa except by virtue of an import permit issued in terms of section 6 of the said International Trade Administration Act, 2002, and in which such goods are specifically described;”

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- An import permit for a used /second hand fishing vessel is required. When making an application for an import permit for a used / second hand fishing vessel the standard response from ITAC is to refuse the application. ITAC will provide you with an ITAC internal guideline document “International Trade Administration Commission of South Africa Import Control”. This document sets out which used / second hand items require an import permit.
- However there is no specific mention in the ITAC internal guideline document of used / second hand fishing vessels.

4. Refusal Decisions by ITAC:

- The decision letters from ITAC refusing the issue of an import permit from ITAC have mostly been similar. Typical responses normally refer you to Government Initiatives and programmes as well suggesting that you go to the local shipyards to order and build a new vessel.
- Typical responses in the Decision letters received from ITAC include:

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“The importation of used and second hand goods, waste and scrap is controlled for environmental reasons, health reasons and safety and quality compliance reasons. Control is also maintained to support sustainable industrialisation and international competitiveness”.

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“And it is a general rule that the importation of used and second hand goods is not allowed in the event or similar or substitute new goods being available from local manufacturers. These measures are necessary and are applied as most used goods are available from affluent societies at very low prices and the uncontrol importation of such goods could have a devastating effect on local manufacturing activities and job creation.”

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“Government initiatives and programmes such as the Industrial Policy Action Plan (IPAP) and the New Growth Path (NGP) have also been taken into consideration. It is critical, to this end, that local manufacturers are supported, inter alia, in order to maintain employment levels and to stimulate economic growth. Other local manufacturers of ships/vessels and parts or components thereof would, no doubt, be prepared to enter the manufacturing market should market conditions improve.”

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Applicants response to this has been to provide a detailed explanation of the short and long term economic benefits of importing and operating a used /second hand fishing vessel to the local ship repair, ship supply, crew and crew training industries, contribution to tax etc.

Importing a used /second hand fishing vessel allows companies to start fishing their quotas within a short period of time compared to the long lead times of building a new vessel.

As these arguments do not support the local shipbuilding industry, ITAC will not accept them and continue to issue refusal letters.

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*“The Department of Trade, Industry and Competition (the DTIC) undertook research on the feasibility of designating **working vessels** for local procurement. This process culminated in the designation of working vessels with a 60% local content. The rationale behind designating working vessels for local procurement lies with the fact that large number of vessels are being procured by government and State-Owned Companies (SOCs). Considering the challenges of unemployment in South Africa and the opportunity offered by public procurement of working vessels, designation of the sector can resuscitate the local ship/boat building industry and thus boost job creation across numerous sub-sectors and value chains.”*

- If we refer to the revised Preferential Procurement Policy Framework Act (PPPFA) regulations which came into effect on the 7 December 2011 which empower the Department of Trade, Industry and Competition (the DITC) to designate industries, sectors and sub-sectors for local production at a specified level of local content.

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- Under “Working Vessels” they stipulate the local content as:

| | |
|---|--------------|
| Working Vessels/Boats (All types): | 60% |
| • Components | • 10% – 100% |
| Conveyance Pipes | 80% – 100% |

- Following from this I was referred to another document – “National-Treasury-Designated-Sectors-Circular-Number-1-of-2018-2019-Working-Vessels”. This document describes in detail the percentage of local content for each component on the vessel including items such as radars, radios, etc., and the method of calculating the total local input.

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- This document is addressed to and applicable to:

ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS AND
CONSTITUTIONAL INSTITUTIONS

ACCOUNTING OFFICERS OF ALL MUNICIPALITIES AND MUNICIPAL ENTITIES

ACCOUNTING AUTHORITIES OF ALL SCHEDULE 2 AND 3 PUBLIC ENTITIES

HEAD OFFICIALS OF PROVINCIAL TREASURIES

- There is no mention in these documents that they apply to private companies such as fishing companies. It is therefore not understood why these restrictions are being applied to the import of used / second hand fishing vessels.

“ITAC cannot grant an exclusive right to [REDACTED] to import used fishing vessel from abroad as this would have a secondary anti-competitive effect. Applications for used fishing vessel can also be expected from other domestic importers, which would reduce overall sales of new locally manufactured fishing vessel.”

- The issue here is that the size and type of vessel that is required is not being built locally. There are GRP vessels of up to 27 metres length overall being built locally and the vessels required to be imported are steel vessels in excess of 27 metres. We are looking at the 36 to 60 metre range of vessel.

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“This office has no objection in you approaching SARS customs to have this used fishing vessel imported temporary into South Africa in order to consult and order a fishing vessel from a local manufacturer.”

- We have been advised that we can temporarily import a used / second hand vessel and then take it to the local Shipyard so that they can quote to build a new vessel to similar specifications. ITAC will issue a three year temporary import permit on the basis that the client orders and builds a new vessel from a local shipyard in that period. There is no economic sense in this.
- It has been proposed that the design including a full set of cutting plans could be purchased overseas from one of the recognised fishing vessel designers and that this be used by the local shipyard. This may be an option but the costs of building steel vessels locally currently exceed the costs of building overseas.

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- There is no import permit required to import a newbuild vessel from overseas but as mentioned, there would be cost issues and a 2 to 3 year lead time.
- Purchasing a second hand vessel means that the vessel can be fishing locally within a few months and at a much lower cost. In other words immediately contributing to and maintaining the viability of the fishing industry.

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“In light of the above and after careful consideration of all the current and previous relevant information it is regretted that the request to import used fishing vessel here in question cannot be acceded to.”

- ITAC continue to refuse to issue import permits for used / second hand fishing vessels despite various approaches, representations and motivations from the applicants. Some of the issues and consequences of the ITAC refusal decisions noted are:
 - Various fishing companies, fishing sector associations and I am advised, FishSA have made representation to ITAC but have not been successful in obtaining import permits.

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- The fishing industry cannot afford to purchase newbuild fishing vessels at the costs been proposed.
- There is a risk of the fishing industry being severely impacted due to the high cost of obtaining vessels where some parties have expressed a view that they would exit the industry if they were unable to purchase and import a used / second hand vessel.
- The age of the fleet is increasing with the associated safety risks.
- The older vessels are less fuel and emission efficient than the newer vessels which impacts the sustainability of the fishing industry with fuel being one of the major cost factors.

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- The safety of the lives of the seafarers serving in these older vessels is at risk due to the increasing age of the vessels.
- A new entrant into the industry who has been awarded a long term right and quota during the last FRAP process, simply cannot afford to build a new vessel and is denied the right to purchase and import a used / second hand vessel to be able to catch his quota, grow his business and compete with other established companies.
- Importing a newer used / second hand fishing vessel has immediate economic benefits for the local ship repairer, ship supply, crew industry already servicing the fishing industry. These vessels all require some form of upgrade, refurbishment when arriving in South Africa as well as the continued employment of the crew on these vessels.

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- If a company can afford a larger new build fishing vessel such as a deep sea freezer or wet fish vessel, then they would place an order with one of the overseas shipyards that specialise in building these types of vessels. Based on research done by a colleague, it would be similar, if not less expensive than building locally and the lead time would be less. The vessel would also have been designed specifically for the type of fishing operation required.
- Currently GRP vessels are being built locally and it is unlikely that the import of used /second hand steel fishing vessels which are mostly over 27 metres in length will have any impact on their business.
- The fishing industry as it is today has been built on the import of used /second hand fishing vessels and in the past ITAC has issued numerous permits for the import of these vessels.

5. Conclusions:

- The impact of the ITAC refusal decisions are evident already in the industry.
- There will be no benefit to local shipbuilders as fishing companies would most likely order and build new vessels overseas if they could afford to do so.
- Local ship repairers and suppliers currently in the industry would be affected as they would not have second hand vessels imported into the country to refurbish and repair.

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- The long term sustainability of the fishing industry could be compromised and the cost of providing this vital food source to the country would simply become unaffordable.
- Urgent intervention is required with ITAC from all sectors of the industry as well as the relevant Government Departments.
- Failure to do so will have a serious impact on our future, the future of the fishing industry and the safety of the lives of the seafarer serving on these vessels.

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6. Questions: