

APPLICATION FOR THE CONTINUATION OF STATUTORY MEASURES: LEVIES IN TERMS OF THE MARKETING OF AGRICULTURAL PRODUCTS ACT, 1996, (ACT NO 47 OF 1996), (MAP ACT) AS AMENDED

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INVITATION TO DIRECTLY AFFECTED GROUPS IN THE OILSEEDS INDUSTRY TO FORWARD COMMENTS REGARDING THE REQUEST FROM THE SA CULTIVAR AND TECHNOLOGY AGENCY (SACTA), FOR THE CONTINUATION OF LEVIES ON SOYBEANS FOR BREEDING AND TECHNOLOGY PURPOSES

On 22 April 2022, the National Agricultural Marketing Council (NAMC) received a request from the South African Cultivar and Technology Agency NPC (SACTA) on behalf of specific role players in the oilseeds industry, that the Minister of Agriculture, Land Reform and Rural Development approve the continuation of the statutory levy on soybeans until February 2025. This application was made in terms of section 15 of the Marketing of Agricultural Products Act, Act No 47 of 1996 (MAP Act). The purpose of the statutory levy is to finance new breeding technology in the soybean industry.

The request includes the following periods and levy rates (VAT excluded) to be administered by SACTA, to be approved by the Minister:

Commodity	Period	Amount (VAT Excl)
Locally produced soybeans	1/3/2023 to 28/2/2024	R66 per metric ton
	1/3/2024 to 28/2/2025	R92 per metric ton

In 2016, grain and oilseeds industry role-players acknowledged the need for a sustainable industry research funding strategy in respect of self-pollinated crops. It was subsequently decided to introduce breeding and technology levies to ensure a sustainable research funding model. This model is based, *inter alia*, on the Australian end-point royalty system.

According to the applicant, royalty collection systems are widely utilised on the actual yield of crops. These royalty collection systems are essentially risk sharing mechanisms, whereby beneficiaries of research are expected to pay a royalty (levy) based on accrued benefits (yield or utilisation of the crop) as a result of breeding activities. On 1 March 2019 a statutory levy was imposed on soybeans and subsequently extended to 28 February 2023. The levy amounts were R57 per ton in the first year and R55 per ton in the second year. This levy proved to be very beneficial to the soybean industry and the industry therefore fully supports the further continuation thereof.

SACTA was established to act as Administrator of the Breeding and Technology Levy System. The Board of Directors of SACTA includes industry role-players that are directly affected by the payment and/or utilisation of the levies, as well as two representatives appointed by the Minister of Agriculture, Land Reform and Rural Development. The aim is for SACTA to eventually administer breeding and technology levies on most self-pollinated crops.

According to the applicant, the levy system is very effective and payments to the appropriate seed marketing companies will again soon be made in respect of the 2021/2022 marketing

season. Continuation of the model is important in order to maintain the required benefits for the development of new seed technology to improve yields and to sustain food security in South Africa.

In approved, the levy will be payable to SACTA by buyers, processors and persons issuing a silo receipt, and will be recovered from producers. Persons paying the levy may claim 2,5% commission on the amount of the levies recovered, in accordance with the conditions set by SACTA from time to time.

PARTICULARS OF STATUTORY MEASURE REQUIRED UNDER SECTION 10 OF THE MAP ACT

The relevant particulars, as required in terms of section 10(2) of the MAP Act, to be included in a request for the establishment of a statutory measure of this nature, are as follows:

1. The proposed statutory levy would relate to soybeans that are produced in the Republic of South Africa;
2. The manner in which the objectives referred to in section 2(2) of the MAP Act will be advanced (namely increased market access for all market participants, promotion of the efficiency of the marketing of agricultural products, optimisation of export earnings from agricultural products and the enhancement of the viability of the agricultural sector) is summarised below:

The purpose and aim of the statutory measure are to compensate breeders of soybean varieties for their proportionate involvement and contribution towards obtaining and utilising improved international intellectual property to the benefit of the soybean industry in the Republic of South Africa.

SACTA distributes the levies that are collected to the seed breeders, in accordance with their proportionate market share, in terms of a formal Agency Agreement that is concluded with breeders.

Sustainable commercial farming of soybeans, the soybean industry at large, as well as food security in the country, are all dependent on the cultivation of high yielding soybean crops from seed varieties most suited to a particular production region.

The development of new cultivars, with improved quality and yield characteristics, constitutes an important part of breeding and technology research as undertaken by various organisations. The continuous development of new cultivars is indispensable to the sustained production of soybeans in South Africa.

Worldwide, the legislation concerning Plant Variety Protection ("PVP") and the protection of self-pollinated crops are insufficient to guarantee a return on investment on the intellectual property held by the holders of Plant Breeders' Rights. This is due to PVP exceptions such as "Farmer's Privilege" and the fact that the grain produced from self-pollinated crops has the same genetic content as the parent. This means that seed can be harvested and replanted by farmers, which creates a situation where farmers could, for example, only purchase one season's seed, then lawfully save seed of their harvests for the next and subsequent planting seasons. The consequence is that commercial seed sales are jeopardised by:

- low volumes (as it is cheaper for farmers to retain their own grain for seed); and
- low price levels (since any increase in seed prices triggers an increase in the use of farm saved seed).

The existence of international networks is critical in seed breeding, as most agriculture related intellectual property is owned by or falls under foreign control. Without an appropriate mechanism to receive adequate compensation, and to account for the risk of exploitation, South Africa will remain an unattractive destination for agriculture related intellectual property associated with self-pollinated crops. This means that access to international nurseries, markers, techniques and technologies is being constrained. The result is that South African farmers do not have access to improved agriculture related intellectual property that is available worldwide, which the breeding and technology levy aims to address.

3. The Administration of SACTA will take responsibility for the collection of the levy and for the administration functions associated with the proposed levy. The Board of Directors of SACTA appointed specific persons and institutions to carry out these functions.

BUSINESS PLAN:

The application included the following budget as proposed by SACTA. Crop estimates were based on the average crop size of soybeans over the past three years, but it is envisaged that yields may increase due to the release of new cultivars and technology.

SACTA Estimated budget: soybean levy

Financial year	Estimated crop size (Tons)	Levy amount (R/Ton)	Budgeted levy income R	Seed breeders' distribution R	Transformation Expenditure R	Administration cost R
2023/24	1 710 000	66	101 235 420	78 204 362	20 247 084	2 783 974
2024/25	1 710 000	92	141 116 040	109 364 931	28 223 208	3 527 901

The NAMC noted that the expected income by means of the proposed statutory levy is based on an expected success rate of 92% in the collection of the levy. The levy income for the proposed two years is estimated to be between R101 million to R141 million per year.

These statutory funds will be used to support breeding research functions, based on the following:

- The levy funds are earmarked for commercial breeding activities by seed companies based on their performance and utilisation in the seed market;
- These funds will be distributed according to the calculated market share of each seed company;
- At least 20% of the levy income will be used for transformation and development projects, of which the business plan will be considered by the NAMC;
- The budget for administration costs represents less than 3% of the expected income by means of statutory levy on soybeans during the next years; and
- The levy is applicable on local production only and not on imported commodities.

INVITATION FOR COMMENTS:

As the proposed continuation of the breeding and technology levy is consistent with the objectives of the MAP Act, the NAMC is investigating the possible implementation of the relevant statutory levy.

Directly affected groups in the oilseeds industry are kindly requested to submit comments or objections regarding the proposed breeding and technology levy on soybeans to the NAMC in writing (e-mail lizettem@namc.co.za) on or before 3 June 2022, to enable the Council to formulate its recommendation to the Minister in this regard.